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

Reserved on: 05/11.10.2021

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Pronounced on: 09.11.2021

+ CS(COMM) 90/2021

SUPER CASSETTES INDUSTRIES PVT.LTD. Plaintiff

Through Mr.Amit Sibal, Sr.Adv. with Mr.Neel Mason, Ms.Ridhima Pabbi, Mr.Uday S.Chopra, Mr.Harish Kaushik, Mr.Abhay Chattopadhyay, Ms.R.Ramya, Mr.Siddharth Vardhman, Mr.Vinay Tripathi, Ms.Devangini Rai, Ms.Varsha Jhavar and Mr.Saksham Dhingra, Advs.

Versus

MUSIC BROADCAST LIMITED Defendant

Through Mr.Neeraj Kishan Kaul, Sr. Adv. with Mr.Sagar Chandra, Ms.Surabhi Iyer, Ms.Sakshi Pande and Ms.Namisha, Advs.

+ CS(COMM) 132/2021

SUPER CASSETTES INDUSTRIES PVT.LTD. Plaintiff

Through Mr.Amit Sibal, Sr.Adv. with Mr.Neel Mason, Ms.Ridhima Pabbi, Mr.Uday S.Chopra, Mr.Vihan Dang, Mr.Harish Kaushik, Mr.Abhay Chattopadhyay, Mr.Shivang Sharma, Ms.R.Ramya, Mr.Siddharth Vardhman, Mr.Vinay Tripathi and Mr.Saksham Dhingra, Advs.

versus

DB CORP. LTD. (RADIO DIVISION) Defendant

Through Mr.Abhishek Malhotra, Ms.Naomi Chandra, Ms.Shilpa Gamnani, Ms.Atmaja

Tripathi, Mr.Gurmukh Choudhri and Ms.Sanya
Dua, Advs.

+ CS(COMM) 140/2021

SUPER CASSETTES INDUSTRIES PVT.LTD. Plaintiff

Through Mr.Amit Sibal, Sr.Adv. with Mr.Neel
Mason, Ms.Ridhima Pabbi, Mr.Uday S.Chopra,
Mr.Vihan Dang, Mr.Harish Kaushik, Mr.Abhay
Chattopadhyay, Mr.Shivang Sharma,
Ms.R.Ramya, Mr.Siddharth Vardhman, Mr.Vinay
Tripathi and Mr.Saksham Dhingra, Advs.

versus

ENTERTAINMENT NETWORK (INDIA) LTD. Defendant

Through Mr.Abhishek Malhotra, Ms.Naomi
Chandra, Ms.Shilpa Gamnani, Ms.Atmaja
Tripathi, Mr.Gurmukh Choudhri and Ms.Sanya
Dua, Advs.

+ CS(COMM) 222/2021

SAREGAMA INDIA LTD. Plaintiff

Through Mr.Akhil Sibal, Sr.Adv. with
Mr.Ankur Sangal and Ms.Sucheta Roy,
Advocates.

versus

NEXT RADIO LTD. Defendant

Through Mr.Abhishek Malhotra, Ms.Naomi
Chandra, Ms.Shilpa Gamnani, Ms.Atmaja
Tripathi, Mr.Gurmukh Choudhri and Ms.Sanya
Dua, Advs.

+ CS(COMM) 320/2021

SUPER CASSETTES INDUSTRIES PVT.LTD. Plaintiff

Through Mr.Amit Sibal, Sr.Adv. with Mr.Neel Mason, Ms.Ridhima Pabbi, Mr.Uday S.Chopra, Mr.Vihan Dang, Mr.Harish Kaushik, Mr.Abhay Chattopadhyay, Mr.Shivang Sharma, Ms.R.Ramya, Mr.Siddharth Vardhman, Mr.Vinay Tripathi and Mr.Saksham Dhingra, Advs.

versus

RAJASTHAN PATRIKA PRIVATE LIMITED Defendant

Through Mr.Abhishek Malhotra, Ms.Naomi Chandra, Ms.Shilpa Gamnani, Ms.Atmaja Tripathi, Mr.Gurmukh Choudhri and Ms.Sanya Dua, Advs.

+ CS(COMM) 321/2021

SUPER CASSETTES INDUSTRIES PVT.LTD. Plaintiff

Through Mr.Amit Sibal, Sr.Adv. with Mr.Neel Mason, Ms.Ridhima Pabbi, Mr.Uday S.Chopra, Mr.Vihan Dang, Mr.Harish Kaushik, Mr.Abhay Chattopadhyay, Mr.Shivang Sharma, Ms.R.Ramya, Mr.Siddharth Vardhman, Mr.Vinay Tripathi and Mr.Saksham Dhingra, Advs.

versus

T.V. TODAY NETWORK LIMITED Defendant

Through Mr.Abhishek Malhotra, Ms.Naomi Chandra, Ms.Shilpa Gamnani, Ms.Atmaja Tripathi, Mr.Gurmukh Choudhri and Ms.Sanya Dua, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

IA No. 2701/2021 in CS(COMM) 90/2021

IA No. 4360/2021 in CS(COMM) 132/2021

IA No.4528/2021 in CS(COMM) 140/2021

IA No.6282/2021 in CS(COMM) 222/2021

IA No. 8126/2021 in CS(COMM) 320/2021

IA No. 8131/2021 in CS(COMM) 321/2021

1. The facts and issues raised in the aforesaid matters are broadly same. For the purpose of this judgment, I am confining myself to the facts of the first suit, namely, IA No.2701/2021 in CS(COMM) 90/2021 titled as '*SUPER CASSETTES INDUSTRIES PVT. LTD. vs. MUSIC BROADCAST LIMITED.*'

2. IA No. 2701/2021 is an application under Order 39 Rules 1 and 2 CPC seeking an ex parte injunction to restrain the defendant, its directors, employees, etc. from broadcasting/communicating to the public and otherwise exploiting the plaintiff's copyright works through the defendant's FM Radio channels/stations and infringing the plaintiff's copyright works.

3. The plaintiff has filed the accompanying suit i.e. CS(COMM) 90/2021 seeking a decree of permanent injunction and a decree/order directing the defendant to render statement of accounts on account of revenue earned from exploitation of the plaintiff's copyright words or defendants FM radio stations. A decree of damages is also sought.

4. The case of the plaintiff is that the plaintiff is engaged in the business of producing and/or acquiring cinematograph films, audio-visual songs, sound recordings including the underlying musical works/compositions and

literary works/lyrics embodied therein. It is stated that the plaintiff's repertoire of works relates to more than 2,20,000 songs comprising of more than 24,000 hours of music. It is claimed that the plaintiff's works comprises the most popular contemporary film and non-film music in India. Being the copyright owner, it is stated, the plaintiff has the exclusive right to license a part of or all of the aforementioned rights, to monetize or seek royalty in respect of such exploitation and has exclusive right to sue for infringement of these rights.

5. The defendant is said to be a FM Radio Broadcaster. It is stated that the plaintiff and the defendant entered into a license agreement on 25.01.2013 whereby the plaintiff granted the defendant a limited, non-exclusive and non-transferrable license to broadcast the plaintiff's sound recordings and the underlying literary and musical works as specified in the agreement. The said license agreement was mutually extended on several occasions but the same was not extended beyond 31.01.2021.

6. It is stated that the defendant filed an application before the then Intellectual Property Appellate Board (IPAB) under Rule 31 of the Copyright Rules, 2013 (hereinafter referred to as 'the Rules) seeking determination of rates for the purpose of statutory license under Section 31 D of the Copyright Act, 1957 (hereinafter referred to as 'the Act'). IPAB by its judgment dated 31.12.2020 determined the royalty rates and payment mechanism for the statutory licensing for communication to the public of sound recordings and underlying literary and musical works embodied in sound recording by way of FM Radio Broadcast. An appeal has been filed against the said order being RFA No. 49/2021 and the said matter is still pending before this court. There are no interim orders.

7. On 25.01.2021, the defendant vide email sent a notice under Rule 29 of the Rules invoking the statutory license granted under Section 31 D of the Act. The plaintiff responded to the said notice on 30.01.2021 setting out the reasons as to why the purported notice fails to meet the requirements of the applicable law which includes the IPAB Order, Section 31D of the Act and the Rules. It is stated that the said notice fails to meet the statutory requirements as follows:-

a. The notice is completely silent in relation to literary and musical works forming part of the sound recordings that are part of the plaintiff's copyright works.

b. Notice does not specify the name of the channel on which there is an intent to broadcast the plaintiff's copyright works.

c. The notice does not specify the year of publication of the plaintiff's copyright works that the defendant intends to broadcast.

d. The notice does not specify the name of the programme, the time slot, duration and the period of broadcast in respect of any of the works from the plaintiff's copyright works that the defendant intends to broadcast on each of its channels/FM stations.

e. The notice fails to identify the name of each work, the defendant intends to broadcast and state the alteration, it intends to make specifically and individually for each such work.

f. Advance payment of Rs.1.50 lakh was grossly insufficient as the defendant purportedly intended to broadcast all the songs forming part of the plaintiff's copyright works.

g. The notice also fails to provide any basis/data/calculation.

8. Hence, the plaintiff refunded the advance payment.

9. The grievance of the plaintiff is that while monitoring the broadcasts on the defendant's FM Radio station, the plaintiff's representatives discovered that the sound recordings and the underlying musical and literary works embodied therein forming part of the plaintiff's copyright works were being communicated to the public conveying an impression to the public that the defendant is authorised by the plaintiff to exploit the plaintiff's copyright works. It is stated that plaintiff hence sent a legal notice dated 08.02.2021 to the defendant. The defendant sent a reply on 10.02.2021. It is urged that despite the legal notice, the infringing activities of the defendant are continuing. Hence, the present suit.

10. The defendant in the written statement pleads that the suit is barred by law as it violates Section 76 of the Act. It is urged that after the expiry of the voluntary license agreement on 31.01.2021, the defendant sought to invoke the statutory license under Section 31 D of the Act in good faith by giving the plaintiff prior notices on 25.01.2021 and 19.02.2021 of its intention to broadcast its sound recordings in the calendar months of February and March 2021. The defendant paid advance royalty to the plaintiff in the manner and at the rate fixed by the IPAB for February and March 2021. The duration and territorial coverage of the intended broadcast was also mentioned in the prior notices. Hence, it is urged that there is compliance of Section 31 D of the Act. It is stressed that Section 31D of the Act dispenses with the requirement of consent from the copyright owner inasmuch as the said provision envisages a non-voluntary licensing mechanism whereby the defendant requires no authorisation or consent or license from the plaintiff to broadcast its sound recordings. It is urged that the operation of Section 31 D of the Act is instantly triggered upon the defendant giving prior notice of its

intent to broadcast its sound recordings. It is stated that the present suit of the plaintiff is only an attempt to coerce the defendant to enter into repeated lengthy, expensive and monopolistic license agreements at exorbitant royalty rates, disregarding Section 31D of the Copyright Act.

11. It is the case of the defendant that they have complied with Section 31D of the Act and that they have taken the following steps:-

“(i) given prior notice of its intention to broadcast Plaintiff’s sound recordings;

(ii) paid advance royalties to the Plaintiff at the rate fixed by the Hon’ble IPAB;

(iii) stated the duration of its intended broadcast of plaintiff’s sound recordings;

(iv) stated the territorial coverage of its intended broadcast of Plaintiff’s sound recordings.”

12. The defendant also urges that it complied with Rule 29. It is urged that the insistence of the plaintiff that the defendant is required to specifically identify the name of each work which it intends to broadcast is a mischievous argument and is only an attempt to delay the operation of the statutory license regime. It is urged that particulars under Rule 29(4)(i) and (j) can be shared by the defendant only depending on the fact as to whether the song is actually played or broadcasted. It is stated that the name, time slot, duration and period of the programme in which the songs are intended to be included are flexible and subject to changes on account of public interest/government announcements, promotional events and sponsorship advertisements, etc.

13. It is stated that the schedule of the defendant’s programme is subject

to change on day-to-day basis depending upon various factors. It is stressed that the defendant has substantially complied with the provisions of Rule 29 (4) of the Rules and that if there is any irregularity, it is merely procedural and a curable defect. The same does not vitiate the process and any interpretation to the contrary would defeat the very purpose of Section 31D of the Act. It is also stated that the requirement to furnish particulars under Rule 29(4) is directory and not mandatory.

14. I have heard learned senior counsel for the plaintiff and learned senior counsel for the defendant.

15. Learned senior counsel for the plaintiff has pointed out that six suits have been filed by the plaintiff for infringement of its copyright against six radio broadcasting companies. He has pleaded as follows:-

(i) Reliance is placed on Section 16 of the Copyright Act which provides that no person shall be entitled to copyright or otherwise than under and in accordance with the provisions of the Act. The primary method that an owner of copyright employs to exploit the copyright and to make his work available to the public is through the vehicle of voluntary license in terms of Section 30 of the Act. It is stated that there are three modes of licensing under the Copyright Act i.e. (i) voluntary licensing under Section 30, (ii) commercial licensing under Section 31 and (iii) statutory licensing under Section 31D. It is urged that in the absence of voluntary license, a defendant can broadcast sound recordings forming part of the plaintiff's repertoire "subject to the provision of the Section" i.e. Section 31 D of the Act. Rule 29 of the Copyright Rules contains the manner prescribed for the advance notice that must be sent under Section 31D(2).

(ii) It is strongly urged that Section 31D is an expropriatory legislation

and therefore, it requires strict compliance of statutory provisions including Rule 29 of the Rules.

(iii) It is further urged that the Act and the Rules require an advance notice of broadcast of work much specifically stating the details provided under Rule 24 (4) in a work specific manner and the defendant has in the impugned notices completely failed to identify the plaintiff's works that are proposed to be broadcast under the statutory license and the defendant has failed to provide the required details in relation to such broadcast which are necessary. The notices issued by the defendant are grossly in non-compliance to the Scheme of statutory license.

(iv) Reliance is placed on the judgment of the Supreme Court in the case of *Saregama India Ltd. vs. Next Radio Limited & Ors.*, being 2021 SCC OnLine SC 817.

16. Learned senior counsel for the defendant has strongly urged as follows:-

(i) It is urged that on account of exorbitant royalty rates coupled with monopolistic and dubious practice adopted by the plaintiff in its voluntary license arrangement, the defendant invoked the statutory license under Section 31D. It is urged that the royalty rates fixed by IPAB in its order dated 31.12.2020 for invoking statutory license are on an average approximately 60% lesser than the royalty rates set by the plaintiff in the voluntary license agreement.

(ii) It is urged that the defendant has given prior notices of its intention to broadcast the works of the plaintiff i.e. through its advance notice dated 25.01.2021, five days in advance, for the broadcast in the month of February 2021 and through notice dated 19.02.2021 for the broadcast in

March 2021.

(iii) It is stated that the submission of the plaintiff that notices should include minute details of every second of broadcast of sound recordings is unfounded. It is stated that the time slot, duration, amount of every second or minute can only be determined at the end of every calendar month post actual broadcast.

(iv) Section 31 D pertains to the entirety of the defendant's intention to broadcast in any calendar month and the same ought not to be confused with duration of the programme under Rule 29 (4) (j).

(v) Even in the earlier voluntary agreement with the plaintiff all the details were sent at the end of month as is apparent from a reading of the agreement.

(vi) It is strongly urged that the present suit is a motivated suit as the plaintiff seeks to put obstructions in the implementation of Section 31 D of the Act.

(vii) It is further urged that what the plaintiff is contending is impossible to be complied with. It is stated that a radio jockey plays songs on the basis of requests received on phone, social media, etc. and on interaction with the audience. He cannot in advance decide which song is going to be played. Then, there are updates of traffic, updates of cricket scores, etc. Songs can be changed. The medium of radio is a dynamic live interactive medium. There cannot be any straight jacket formula. Creativity/spontaneity of a radio jockey cannot be curtailed in the manner as sought by the plaintiff.

(viii) The plaintiff only seeks to put an impediment in the operation of Section 31D of the Act.

(ix) It is further urged that Rule 29 is directory and minor aberrations, if

any, can be no ground for the plaintiff to file the present suit.

17. Both the learned counsel for the parties have relied heavily upon various judgments to plead that Rule 29 is mandatory/directory. For the reasons stated herein, I have not referred to the said judgments.

18. I may first look at the statutory provision. Section 31 D of the Copyright Act reads as follows:-

“31D. Statutory licence for broadcasting of literary and musical works and sound recording.— (1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.

(2) The broadcasting organisation shall give prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the Commercial Court.

(3) The rates of royalties for radio broadcasting shall be different from television broadcasting and the Commercial Court shall fix separate rates for radio broadcasting and television broadcasting.

(4) In fixing the manner and the rate of royalty under sub-section (2), the Commercial Court may require the broadcasting organisation to pay an advance to the owners of rights.

(5) The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.

(6) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other

than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.

(7) The broadcasting organisation shall—

(a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and

(b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast,

in such manner as may be prescribed.

(8) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of the Copyright (Amendment) Act, 2012.”

19. Rule 29 of the Copyright Rules, 2013 reads as follows:-

“29. Notice for Communication to the Public of literary and musical works and sound recordings.—(1) Any broadcasting organization desirous of communicating to the public by way of broadcast or by way of performance of a published literary or musical work and sound recording under sub-section (1) of section 31D shall give a notice of its intention to the owner of the copyright and to the Registrar of Copyrights before a period of five days in advance of such communication to the public and shall pay to the owner of the copyright, in the literary or musical work or sound recording or any combination thereof, the amount of royalties due at the rate fixed by the Board in this regard:

Provided that in case of communication to the public by way of broadcast or by way of performance of a newly published literary or musical work or sound recording or any combination thereof, which has been published within the said period of five days of such communication and which do not form part of the scheduled programmes, the notice shall, be given before such communication to the public:

Provided further that in case of communication to the public by way of broadcast or by way of performance of any published literary or musical work and sound recording or any combination thereof, in unforeseen circumstances, the notice shall, be given within twenty-four hours of such communication to the public:

Provided also that any broadcasting organization shall give a notice under this Chapter only after the royalty to be paid is determined by the Board under rule 31 and published in the Journal and in the website of the Copyright Office and the Board.

(2) Every such notice shall be in respect of works belonging to one owner only.

(3) Separate notices shall be given for communication to the public by way of radio broadcast or television broadcast or by way of performance of a literary or musical work and sound recording which has already been published.

(4) The notice under sub-rule (1) shall contain the following particulars, namely:—

(a) Name of the channel;

(b) Territorial coverage where communication to public by way of radio broadcast, television broadcast or performance under sub-rule (3) is to be made;

(c) Details necessary to identify the work which is proposed to be communicated to the public by way of radio broadcast, television broadcast or performance under sub-rule (3);

(d) Year of publication of such work, if any;

(e) Name, address and nationality of the owner of the copyright in such works;

(f) Names of authors and principal performers of such works;

(g) alterations, if any, which are proposed to be made for the communication to the public by way of radio broadcast, television broadcast or performance of the works, reasons thereof, and the evidence of consent of the owners of rights, if required, for making such alteration;

(h) Mode of the proposed communication to the public, i.e. radio, television or performance;

(i) Name, if any, of the programme in which the works are to be included;

(j) Details of time slots, duration and period of the programme in which the works are to be included;

(k) Details of the payment of royalties at the rates fixed by the Board; and

(l) Address of the place where the records and books of account are to be maintained for inspection by the owner of rights.”

20. Hence, Section 31 D of the Act permits a broadcasting organisation to communicate to the public by way of broadcast or by way of performance of a literary or musical work and sound recording. Section 31D (2) of the Act provides that the broadcasting organisation will give a prior notice, in such manner as may be prescribed, of its intention to broadcast the work stating the duration and the territorial coverage of the broadcast and shall pay to the owner of rights in each work royalties in the manner that may be fixed by the commercial court.

21. Rule 29 of the rules provides the method of notice for communication under Section 31 D (2) of the Act. Rule 29 (4) gives the particulars required

to be given in such notice. The broad controversy revolves around Rule 29(4) (i) (j) and (k) of the Rules.

22. I may now see as to whether the defendant has complied with the aforesaid provisions for giving a prior notice.

23. I may look at the second notice sent by the defendant dated 19.02.2021 under Rule 29 of the Rules read with Section 31D of the Act which reads as follows:-

“WITHOUT PREJUDICE

By Email/Courier

19th February 2021

To,

Super Cassettes Industries Private Limited
E-2/16, White House, Ansari Road,
Darya Ganj, New Delhi-110002.

Re: Issuance of Notice under Rule 29 of the Copyright Rules, 2013 for invoking the Statutory License granted under Section 31D of the Copyright Act, 1957.

Dear Sirs,

This is in relation to the captioned matter.

Please note that we are desirous of broadcasting the published sound recordings which form part of your repertoire under the Statutory License granted to all broadcasting organizations, including radio broadcasting organization, under Section 31D of the Copyright Act.

Therefore, as per the requirement of Rule 29 of the Copyright Rules, 2013, the present notice is being sent to you as well as to the Registrar of Copyrights to put you to notice of our intent to broadcast the published sound recordings which form part of your repertoire, as per the details given below.

Kindly note that the payment for the broadcast of sound recordings is also being made as per the Order dated 31st December, 2020 passed by the Hon'ble Intellectual Property Appellate Board (IPAB) in OP (SEC-31D)/3/2020/CR/NZ, fixing the rate of royalty, inter alia, for broadcast of sound recordings through FM radio, under Section 31D of the Copyright Act, 1957.

The advance royalty amount of Rs 3,00,000/- (Rupees Three Lakh Only) which is 25 % of the estimated amount paid by us through RTGS /NEFT method from our Bank number: 08352120000029 on 19th February 2021 for the month of March 2021. The payment advice is also attached herein for your reference.

Therefore, in compliance of the provisions of Rule 29(4) of the Copyright Rules, 2013, please find below, the requisite information pertaining to the intended broadcast of the sound recordings which form part of your repertoire through FM radio:

Name of the Channel	Radio City
Territorial coverage where communication to public by way of radio broadcast is to be made	The broadcast shall be done through the 39 radio stations operated by MBL at Bangalore, Delhi, Mumbai, Hyderabad, Lucknow, Chennai, Jaipur, Ahmedabad, Vadodara, Surat, Pune, Nagpur, Coimbatore, Vizag, Ahmednagar, Jalgaon, Sangli, Solapur, Nanded, Akola, Patna, Kanpur,

	Madurai, Nasik, Kolhapur, Udaipur, Kota, Bikaner, Ajmer, Jamshedpur, Patiala, Agra, Bareilly, Gorakhpur, Hissar, Jalandhar, Karnal, Ranchi, Varanasi
Details necessary to identify the work which is proposed to be communicated to the public by way of radio broadcast	We intend to broadcast all published sound recordings which form part of your repertoire.
Year of publication of sound recording	We intend to broadcast all published sound recordings which form part of your repertoire.
Name, Address, Nationality of the owner of copyright of such sound recording	Name; Super Cassettes Industries Private Limited Address: E-2/16, White House, Ansari Road, Darya Ganj, New Delhi-110002. Nationality: Indian
Name of authors and principal performers of such sound recordings	We intend to broadcast all published sound recordings which form part of your repertoire.
Alterations, if any, made to the sound recording, reasons thereof, and the evidence of consent of the owners of rights, if required, for making such alteration	No fresh alterations have been made to the sound recordings other than what is technically necessary for broadcasting, such as, shortening the work for convenience of broadcast.
Mode of communication to the public	Radio broadcast through FM Radio
Name, if any, of the programme in which the sound recording is to be included	The sound recordings shall be broadcasted through Radio City and further details of programme shall be in accordance with the logs provided at the end of the calendar month.
Details of time slots, duration and period of the programme in which the works are included	The details of time slots, duration and period of the programme in which the sound recordings are included, shall be in accordance with the logs provided at the end of the calendar month
Details of the payment of royalties at the rates fixed	As per the Order dated 31st December, 2020 passed by the Hon'ble Intellectual

by the Board	Property Appellate Board (IPAB) in OP (SEC-31D)/3/2020/CR/NZ, we are depositing 25% (twenty five percent) as advance amount under the compliance of Rule 29, subject to adjustment of amount every calendar month. Details of the advance deposit amount are stipulated above.
Address of the place where the records and books of account are to be maintained for inspection by the owner of rights:	Music Broadcast Limited 5th Floor, RNA Corporate Park, Off Western Express Highway, Kalanagar, Government Colony, Bandra East, Mumbai, Maharashtra - 400051.

This is for your information, perusal and records and you are requested to take notice and acknowledge the present notice.

Thanking you,
For Music Broadcast Limited
Authorised Signatory
Encl: As stated
CC:
The Registrar of Copyrights,
Boudhik Sampada Bhawan,
Plot No. 32, Sector 14, Dwarka,
New Delhi – 110078”

24. Under Rule 29 (4) (j), the defendant was obliged to give the time slots, duration and period of the programme in which the works are to be included. The defendant admittedly has not given such details and states that the details of the time slots, duration and period of the programme shall be in accordance with the logs to be provided at the end of the calendar month.

25. Similarly, Rule 29 (4) (i) of the Rules provides that names of programme in which the works are to be included are to be given. Such

details as is obvious from the above notice are missing.

26. Similarly, Rule 29(4)(k) provides that details of the payment of royalties at the rates fixed by the Board have also to be provided. The defendant has paid an ad-hoc sum of Rs. 3 lakhs without giving the break-up.

27. There is clearly non-compliance of the Rule 29(4)(i),(j) and (k) and other provisions.

28. The issue is: Is it mandatory for the defendant to give details as elaborated in Rule 29(4) of the Rules?

29. According to the defendant these provisions are not mandatory but directory. It is also urged that even in the past when the voluntary agreements were executed between the parties, the details were provided at the end of the month. It is urged that it is not the grievance of the plaintiff that the details which are given later on are erroneous and not as per the record as stipulated in Rule 30.

30. In my opinion, I need not dwell deeper into the matter at the present stage of the proceedings in view of the judgment of the Supreme Court in the case of *Saregama India Ltd. vs. Next Radio Limited & Ors.(supra)*. The Supreme Court in the said judgment stated as follows:-

“13. Rule 29(4) has been challenged before the High Court on the ground that it (i) violates Article 19(1)(a) of the Constitution; and (ii) is ultra vires Section 31D of the Act.

14. The High Court, in the course of its interim order, observed:

“3. Prima facie, there appears to be an element of unworkability about the Rule in that it may be seen to be almost claustrophobic in its operation and leaving very

little room for flexibility. Indeed, the very concept of speaking or performing ad lib, which is the essence of spontaneity in any live speech or live performance, would be lost if pre-planned details, down to the every second of the programme must be disclosed as the impugned Rule may be read to imply.”

15. The High Court was of the view that the duty which is cast on broadcasters in the notice to broadcast under Rule 29(1) is “apparently onerous”. Consequently, it directed that the petitioners before it may be permitted to resort to the second proviso to Rule 29(4) as a “routine procedure”, instead of an exception, subject to the duration of the ex post facto reporting being enlarged to fifteen days. In other words, the High Court, while maintaining the requirement of a prior notice under Section 31 D, has re-fashioned the rule by stipulating that details pertaining to the broadcasts, particularly the duration, time slots and the like, including the quantum of royalty may be furnished within fifteen days of the broadcast or performance.

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19. Mr Neeraj Kishan Kaul has submitted that:

(i) Section 31D was introduced by Parliament by an amendment of 2012 to obviate the exercise of monopolistic rights wielded by copyright owners to the detriment of the public at large;

(ii) Section 31D creates a statutory right in favour of broadcasters to obtain licenses as a result of which the earlier regime of voluntary licensing has been replaced by the regime of statutory licenses envisaged in Section 31D;

(iii) Until December 2020, in the absence of a duly constituted IPAB, broadcasters were functioning under the ambit of voluntary licensing agreements;

(iv) Rule 29(4) defeats the object of Section 31D insofar as it incorporates minute details in the prior notice which has been prescribed;

(v) Many broadcasters operate in the context of interactive dynamic sites as a result of which the requirements which have been prescribed in Rule 29(4) are onerous and impossible to fulfill;

(vi) The broadcasters are ready and willing to pay royalties which are prescribed by the IPAB according to the statute at the end of every month and even inspection of records is furnished to copyright owners; and

(vii) Whereas Section 31D provides for only the duration and territorial coverage of the intended broadcast, the notice which has been prescribed by Rule 29(4) has gone far beyond the statutory ambit of Section 31D and is ultra vires for that reason.

20. While counsel appearing on behalf of the contesting parties have addressed submissions on merits, we would desist from expressing any opinion on the constitutional challenge which is pending consideration before the High Court of Judicature at Madras where, as noted earlier, the writ petitions are slated for final disposal on 4 October 2021.

21. At this stage, the issue is whether the interim order of the High Court can be sustained. Essentially, as the narration in the earlier part of this judgment would indicate, the High Court has substituted the provisions of Rule 29(4) with a regime of its own, which is made applicable to the broadcasters and the petitioners before it. A Constitution Bench of this Court in *In Re: Expeditious Trial of Cases Under Section 138 of NI Act 1881* has emphasized that the judiciary cannot transgress into the domain of policy making by re-writing a statute, however strong the temptations maybe. This Court observed:

“20. Conferring power on the court by reading certain words into provisions is impermissible. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. The Judge’s duty is to interpret and apply the law, not to change it to meet the Judge’s idea of what justice requires. The court cannot add words to a statute or read words into it which are not there.”

22. It is a settled principle of law that when the words of a statute are clear and unambiguous, it is not permissible for the court to read words into the statute. A Constitution Bench of this Court in *Padma Sundara Rao v State of Tamil Nadu [(2002) 3 SCC 533]* has observed:

“12. ...The court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in the statute is determinative factor of legislative intent. The first and primary rule of construction is that the intention of the

legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said.

.....

14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.”

23. The court is entrusted by the Constitution of the power of judicial review. In the discharge of its mandate, the court may evaluate the validity of a legislation or rules made under it. A statute may be invalidated if is ultra vires constitutional guarantees or transgresses the legislative domain entrusted to the enacting legislature. Delegated legislation can, if it results in a constitutional infraction or is contrary to the ambit of the enacting statute be invalidated. However, the court in the exercise of judicial review cannot supplant the terms of the provision through judicial interpretation by re-writing statutory language. Draftsmanship is a function entrusted to the legislature. Craftsmanship on the judicial side cannot transgress into the legislative domain by re-writing the words of a statute. For then, the judicial craft enters the forbidden domain of a legislative draft. That precisely is what the Division Bench of the High Court has done by its interim order. Section 31D(2) speaks of the necessity of giving prior notice, in the manner as may be prescribed, of the intention to broadcast the work stating the duration and the territorial coverage of the broadcast, together with the payment of royalties in the manner and at the rates fixed by the Appellate Board. While the High Court has held the broadcasters down to the requirement of prior notice, it has

modified the operation of Rule 29 by stipulating that the particulars which are to be furnished in the notice may be furnished within a period of fifteen days after the broadcast. The interim order converts the second proviso into a “routine procedure” instead of an exception (as the High Court has described its direction). This exercise by the High Court amounts to re-writing. Such an exercise of judicial redrafting of legislation or delegated legislation cannot be carried out. The High Court has done so at the interlocutory stage.

24. We are, therefore, clearly of the view that an exercise of judicial re-drafting of Rule 29(4) was unwarranted, particularly at the interlocutory stage. The difficulties which have been expressed before the High Court by the broadcasters have warranted an early listing of the matter and this Court has been assured by the copyright owners that they would file their counter affidavits immediately so as to facilitate the expeditious disposal of the proceedings. That having been assured, we are of the view that an exercise of judicial re-writing of a statutory rule is unwarranted in the exercise of the jurisdiction under Article 226 of the Constitution, particularly in interlocutory proceedings. The High Court was also of the view that the second proviso may be resorted to as a matter of routine, instead of as an exception and that the ex post facto reporting should be enlarged to a period of fifteen days (instead of a period of twenty four hours). Such an exercise was impermissible since it would substitute a statutory rule made in exercise of the power of delegated legislation with a new regime and provision which the High Court considers more practicable.

25. We accordingly allow the appeals by setting aside the interim order of the High Court dated 2 August 2021. This is, however, subject to the clarification that this Court has not expressed any

opinion on the merits of the rival submissions which would fall for determination in the exercise of the writ jurisdiction of the High Court in the pending proceedings.”

31. Hence, the Supreme Court expressed the view that the difficulties expressed by the broadcasters as elaborated in para 19 of the aforementioned judgment cannot be a ground for re-writing the statutory rules in interlocutory proceedings. The said judgment further holds that the impugned order of the Madras High Court converts the second proviso of Rule 29 into a ‘routine procedure’ instead of an exception and that the directions of the High Court tantamount to re-writing of the statutory provision. Such an exercise cannot be carried out that too at an interlocutory stage.

32. As noted above, in the facts of this case, the defendant has admittedly not complied with Rule 29(4)(i), (j) and (k) of the Rules.

33. It has been strongly urged that literal compliance of the afore-noted Rule 29(4) is neither feasible nor required. It is urged that there is substantial compliance. It is further urged that in any case, it is not the grievance of the plaintiff that any manipulation has been done by the defendant. This court is now dealing with this matter at an interlocutory stage. At this stage, this court, as noted above by the Supreme Court, cannot re-write the provisions of Rule 29 (4) of the Rules. The defendant has chosen to voluntarily abandon the voluntary license regime that they were earlier following in compliance of Section 30 of the Act. At this stage, once they have shifted to the statutory license scheme for broadcasting as spelt out in Section 31D of the Act, prima facie, they would have to comply with the terms and

conditions of the Statute and the Rules thereof. The defendant has admittedly failed to comply with the said Rules. The plaintiff has made out a prima facie case.

34. The defendant, its directors, employees, etc. are accordingly restrained from broadcasting/communicating to the public and/or otherwise exploiting the plaintiff's copyright works through the defendant's FM Radio channels/stations without complying with Rule 29, especially, with Rule 29(4)(i)(j) and (k) of the Copyright Rules, 2013.

35. IA No. 2701/2021 stands disposed of.

36. The same order as passed in IA No. 2701/2021 is passed in IA No. 4360/2021, IA No.4528/2021, IA No.6282/2021, IA No. 8126/2021 and IA No. 8131/2021. The same also stand disposed of.

JAYANT NATH, J

NOVEMBER 09, 2021/rb

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