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

+ **LPA 243/2022, CAV 77/2022 & CM Nos.16964-69/2022**

RECORDED MUSIC PERFORMANCE LIMITED Appellant

Through: Mr Aman Lekhi, Sr. Adv. with Ms Bitika Sharma, Ms Vanditta Malhotra Hegde, Mr Lakshay Kaushik, Mr Luv Virmani, Ms Aadya Chawla and Mr Ritwiz Rishabh, Advs.

Versus

PHONOGRAPHIC PERFORMANCE LTD. & ORS. ... Respondents

Through: Mr Rajiv Nayar and Mr Akhil Sibal, Sr. Advs. With Mr Ankur Sangal and Ms Suchita Roy, Ms Asavari Jain, Ms Deboshree Mukherjee and Ms Trisha Nag, Advs. for R-1.
Mr Harish Vaidyanathan Shankar, CGSC with Ms S. Bushra Kazim, Mr Srish Mishra, Advs. For R-2 & 3/UOI.

+ **LPA 244/2022 & CM Nos.17004-09/2022**

RECORDED MUSIC PERFORMANCE LIMITED Appellant

Through: Mr Aman Lekhi, Sr. Adv. with Ms Bitika Sharma, Ms Vanditta Malhotra Hegde, Mr Lakshay Kaushik, Mr Luv Virmani, Ms Aadya Chawla and Mr Ritwiz Rishabh, Advs

Versus

PHONOGRAPHIC PERFORMANCE LTD. & ANR. ... Respondents

Through: Mr Rajiv Nayar and Mr Akhil Sibal, Sr.
Advts. With Mr Ankur Sangal and Ms
Suchita Roy and Ms Trisha Nag, Advts.
for R-1.

Mr Harish Vaidyanathan Shankar, CGSC
with Ms S. Bushra Kazim, Mr Srish
Mishra, Advts. For R-2 & 3/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE POONAM A. BAMBA

ORDER

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11.04.2022

[Physical court hearing/ hybrid hearing (as per request)]

CAV 77/2022 in LPA 243/2022

1. Since the counsel for the caveator/respondent has entered appearance, the caveat stands discharged.

CM Nos.16965-68/2022 in LPA 243/2022

CM Nos.17005-08/2022 in LPA 244/2022

2. Allowed, subject to the applicant/appellant filing legible copies of dim documents, at least three days before the next date of hearing.

LPA 243/2022, CM Nos.16964/2022 & 16969/2022

LPA 244/2022, CM Nos.17004/2022 & 17009/2022

3. These are two appeals assailing the common judgment dated 09.03.2022, passed by the learned Single Judge in W.P.(C)-IPD Nos.21/2021 & 41/2021.

3.1. The operative directions are contained in paragraph 38 of the impugned judgement; for the sake of convenience, the same is extracted hereafter :

“38. Thus in view of above, impugned orders dated 25.05.2021 and 18.06.2021 both are set aside. Respondent No.1 is directed to re-consider the application of the petitioner for re-registration on merits, as being filed in time. The respondent No.1 is expected to undertake this whole exercise within a reasonable time and the outcome be communicated to the petitioner.”

3.2. Insofar as the learned Single Judge’s direction for setting aside the order dated 25.05.2021 is concerned, that pertains to respondent no.1. As regards the other part of the operative direction i.e., setting aside of the order dated 18.06.2021 is concerned, this involves the appellant.

3.3. The order dated 18.06.2021 concerned the certificate of registration issued in favour of the appellant, which has been set aside.

3.4. On the other hand, via order dated 25.05.2021, respondent no.2 declined the grant of re-registration as sought by respondent no.1. The reason furnished by respondent no.2 is set out in paragraph 3 of the said communication. For the sake of convenience, the same is set forth hereafter:

“3. After due deliberation, it has been decided that registration cannot be granted to PPL as it is in violation of second proviso of section 33(3A) of Copyright (Amendment) Act, 2012, which clearly states that every copyright society already registered before coming into force of the Copyright (Amendment) Act, 2012 shall get itself registered under this Chapter with a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012. PPL had filed an application for registration on 9th May, 2013 and withdrew its application on 20th May, 2014. Thus, it has failed to comply with the provisions of the Act.”

4. It has been argued by Mr Aman Lekhi, learned senior counsel, who appears on behalf of the appellant, that respondent no.1 was aware that the appellant had filed an application for registration.

4.1 We are informed by Mr Lekhi that the application for registration was filed by the appellant, on 26.03.2018; a fact which is not disputed by the learned counsel for respondent no.1. Furthermore, Mr Lekhi argues that respondent no.1 had filed opposition to the said application, on 18.07.2018. This aspect is borne out from the record placed before us and, in any event, is not a fact, over which there is contestation.

5. It appears that, in the first instance, when the writ petition i.e., W.P.(C.) 5735/2021 [now W.P.(C.)-IPD No.21/2021], was moved before the learned single judge, an order dated 02.06.2021 was passed. The learned Single Judge, despite a prayer made by respondent no.1 [i.e., the original writ petitioner], did not stay the continuation of the process of registration concerning other applicants, as at that stage, respondent no.1 had not arrayed any other entity, leave alone the appellant, as a party to its writ action.

5.1 In sum, it is the case of the appellant that since respondent no.1 was aware of the fact that the appellant had filed an application for registration, it ought to have arrayed the appellant as a party.

5.2. Notwithstanding the aforesaid contention, Mr Rajiv Nayar, learned senior counsel, who appears on behalf of respondent no.1, says that the learned Single Judge in the order dated 02.06.2021, had made it clear that in case respondent

no.1 were to succeed in its writ petition (which it has), then, its application for re-registration dated 09.05.2013 would be resuscitated.

5.3. Furthermore, Mr Nayar lays emphasis on the fact that the learned Single Judge had indicated in the very same order that the applicant(s), if any, whose request for registration was pending consideration before the Government of India (GOI) i.e., respondent no.2, should be made aware of the ongoing writ action .

5.4. It is Mr Nayar's contention that on 14.06.2021, a communication was sent by respondent no.2/GOI to the appellant intimating it about the pendency of the writ action [i.e., W.P.(C) 5735/2021].

5.5. Mr Nayar says [something which the learned Single Judge has also noted] that respondent no.2/GOI, thereafter, acted in hot haste, and granted registration to the appellant on 18.06.2021.

6. We may note [something which is again not in dispute] that, although respondent no.1 had filed an application for re-registration on 09.05.2013, it withdrew the said application on 20.05.2014.

6.1 Thereafter, it is respondent no.2/GOI which sent a communication to respondent no.1 on 20.11.2014, which, inter alia, conveyed to respondent no.1 that its application for withdrawal dated 20.05.2014 had not been accepted, and therefore, was still being considered.

6.2. Therefore, in sum, our sense is that respondent no.2/GOI has contributed to the muddle.

6.3. Although, the provisions of the Copyright Act, 1957 [in short. ‘1957 Act’] i.e., Section 33, and Rule 49 of the Copyright Rules 2013, would suggest that “ordinarily” there would be only one copyright society, the muddle created by respondent no.2/GOI has got into fray both the appellant as well as respondent no.1.

7. It is required to be noticed that between 18.06.2021 and 09.03.2022, the appellant has been functioning as a copyright society, while respondent no.1 was functioning under the provisions of Sections 18 and 30 of the 1957 Act.

8. Therefore, according to us, the best way forward in the above-captioned matters, would be, which at this juncture, can only be a *pro tem* measure, that respondent no.2/GOI should consider the application of respondent no.1 for re-registration pending the outcome in the appeal.

8.1. Since the appellant, as noticed above, has been functioning as a copyright society before the impugned decision was rendered i.e., 09.03.2022, we are inclined to stay the operation of the impugned judgment to that extent.

8.2. We, however, make it clear that the application of respondent no.1 will be considered by respondent no.2/GOI, notwithstanding the fact that the appellant, by virtue of the directions issued hereinabove, would be functioning as a copyright society.

9. We may note that although Mr Lekhi says that respondent no.1’s application for re-registration cannot be considered since it had withdrawn its application, for the moment, respondent no.2/GOI will not take that aspect into

account because, as noted above, the problem at hand, is the creation of respondent no.2/GOI.

10. *Prima facie*, we have been shown nothing by way of source of power, which would sustain respondent no.2's action of issuing letter dated 20.11.2014. This created a hope in the mind of respondent no.1, which was further strengthened, as noted by the learned Single Judge, with exchange correspondence between the two. This hope got further fillip with the issuance of respondent no.2's/GOI's Office Memorandum dated 06.10.2016.

10.1. We may note that respondent no.2/GOI has not assailed the judgment of the learned Single Judge dated 09.03.2022, although, more than a month has passed.

11. Thus, as noticed above, respondent no.2/GOI will consider afresh the application of respondent no.1 for re-registration, bearing in mind the observations made hereinabove.

11.1. Needless to state, this consideration would have to be done expeditiously by respondent no.2/GOI. Respondent no.2 will render a decision in that behalf at the earliest, though not later than four weeks from the date of receipt of a copy of this order.

12. Issue notice to the respondents.

12.1. Mr Ankur Sangal accepts notice on behalf of respondent no.1, while Mr Harish Vaidyanathan Shankar accepts notice on behalf of respondent nos.2 and 3.

13. Counter-affidavit (s) will be filed, within four weeks from today.

13.1 Rejoinder thereto, if any, will be filed before the next date of hearing.

14. List the above-captioned matters on 28.07.2022.

15. At this stage, Mr Harish Vaidyanathan Shankar, learned central government counsel, who appears on behalf of respondent nos.2 and 3, says that he would like to demonstrate that the cause of the confusion is not respondent no.2/GOI. This aspect of the matter will be examined in greater detail, once pleadings are complete, albeit on the next date of hearing.

16. It is made clear though that aforementioned directions issued by us are subject to the final outcome in the above-captioned appeals.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 11, 2022/aj

[Click here to check corrigendum, if any](#)