

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (LODGING) NO. 39544 OF 2022
IN
COMMERCIAL IP SUIT (LODGING) NO. 39541 OF 2022

Novex Communications Pvt. Ltd.

...Applicant/Plaintiff

Versus

Percept Limited & Anr.

...Defendants

- Mr. Sharan Jagtiani, Senior Advocate a/w Mr. Rashmin Khedekar, Ms. Apurva M. Mr. Hetal T. and Mr. Kunal Parekh i/by Dua Associates for Applicant/Plaintiff.

CORAM : MANISH PITALE, J

DATE : 21ST DECEMBER, 2022.

P. C. :

1. Heard Mr. Sharan Jagtiani, learned Senior Counsel appearing for the Applicant/Plaintiff. The Plaintiff has filed the present Suit in the nature of a *quia timet* action, apprehending violation by the defendants of its exclusive rights in respect of sound recordings.

2. It is pleaded on behalf of the Plaintiff in the plaint that it was earlier constrained to institute proceedings against Defendant No. 2 for similar reliefs. It is stated that the Defendant Nos. 1 and 2 are group companies and that orders passed in earlier proceedings are relevant for the urgent ad-interim reliefs being pressed on behalf of the Plaintiff.

3. It is stated in the plaint that the Plaintiff has obtained assignments from as many as seven music labels and in terms of the assignment deeds executed in favour of the Plaintiff, it has exclusive control and copyright in sound recordings, which are subject matter of the said assignment deeds. The Plaintiff claims such exclusive rights in respect of the repertoire of large numbers film and non-film songs in Hindi and other regional languages. Copies of the assignment deeds executed by the seven music labels are placed on record. It is stated that as per the said assignment deeds "On Ground Performance Rights" are granted to the Plaintiff whereby, *inter-alia*, it has the right to issue further licenses to third parties for playing such sound recordings. Such licenses can be event specific or for specific periods. It is stated that the structure of the fees charged by the Plaintiff for issuing said licenses is available on its website and details of the such assignment deeds and the extent of rights held by the Plaintiff are also uploaded on the website of the Plaintiff.

4. On the basis of such rights held by the Plaintiff and by relying upon Section 18, 19 and 30 of the Copyright Act, 1957, the Plaintiff has been asserting its rights against the Defendant No. 2 herein, in earlier proceedings also. By referring to the orders passed in the earlier proceedings, the Plaintiff is pressing for grant of ad-interim reliefs, particularly in the context of an event organized by

the Defendants between 23rd December, 2022 to 31st December, 2022, popularly known as the Sunburn Festival in Goa.

5. It is brought to the notice of this Court that notice dated 24th November, 2022, was issued to the Defendants, wherein the Plaintiff asserted its rights in the said sound recordings and expressed the apprehension that the Defendants were likely to violate such rights in the said upcoming events. By the said notice, the Plaintiff called upon the Defendants to cease and desist from any such action, that violated exclusive rights held by the Plaintiff and to immediately contact the representative of the Plaintiff for obtaining appropriate licenses for playing the sound recordings in which the Plaintiff has exclusive rights. The Plaintiff has stated that despite service of the said notice, there is no response from the Defendants.

6. Insofar as the present Suit and the Application for interim reliefs are concerned, the Plaintiff has handed over an affidavit of service dated 20th December, 2022, stating that the Defendants were served by way of e-mail and also by courier on 19th and 20th December, 2022. It is stated in the affidavit that the Defendants were also informed that the Plaintiff has moved this Court for 21st December, 2022 i.e. today to press ad-interim reliefs. The affidavit of service is taken on record. There is no representation on behalf of the Defendants.

7. This Court has perused the material on record in the backdrop of the submissions made by the learned Senior Counsel appearing for the Plaintiff. A perusal of one of the assignment deeds executed by a music label in favour of the Plaintiff shows that “On Ground Performance Rights” have been given to the Plaintiff, which means communication of sound recordings to the public during on ground live events in commercial establishments, including clubs, hotels, restaurant etc. Such assignment deeds also give the right to the Plaintiff to issue licenses to third parties for playing such sound recordings. It is specifically stated in the plaint that the details of such assignment deeds and the extent of rights held by the Plaintiff are available on the website of the Plaintiff, along with the fee structure that the Plaintiff charges, depending upon the type of license to be issued. Licenses can be event specific or for a specific period of time.

8. Since much emphasis was placed on the past conduct of the Defendants, this Court has perused the orders passed in earlier proceedings initiated by the Plaintiff against the Defendant No. 2. In this context, the order dated 05th February, 2018, passed by this Court in Notice of Motion (L) No. 143 of 2018 in Commercial IP Suit (L) No. 74 of 2018, is relevant. The order refers to a letter dated 24th January, 2018, sent on behalf of Defendant No. 2 in respect of a

similar festival in the year 2017 and the Court has then recorded that the Advocate appearing for the Defendant No. 2 made a candid statement that the songs in question were played by mistake. It appears that the aforesaid statement made on behalf of the Defendant No. 2 amounted to the said Defendant conceding that the Plaintiff does have exclusive rights in such songs and for that reason, this Court granted temporary injunction in terms of the prayer clause 'a' of the Notice of Motion. Thereafter, on 27th February, 2018, the Plaintiff withdrew the aforesaid Suit.

9. Subsequently the Plaintiff was constrained to file another Suit bearing Commercial IP Suit (L) No. 1477 of 2018 with Notice of Motion (L) No. 2620 of 2018, along with an application seeking interim reliefs. The Defendant No. 2 was served and Manager (Legal) of the said Defendant remained present in Court on 03rd December, 2018. He tendered a written undertaking of the CEO of Defendant No. 2. The said undertaking was recorded and in that light the Suit as well as Notice of Motion were disposed of as withdrawn. The contents of the undertaking are significant and read as follows:

“The Defendant undertakes to this Court that the Defendant shall not use/play the Plaintiff's sound recordings for all its events throughout India. The Defendant further undertakes that in the event the

Defendant is desirous of using/playing the Plaintiff's sound recordings, the Defendant shall obtain the necessary license from the Plaintiff."

10. It appears that thereafter, the Plaintiff was again constrained to file a suit in the year 2020. But, the Suit remained pending and was not prosecuted in the backdrop of the Covid-19 pandemic having hit the nation in March, 2020.

11. In this backdrop, on 24th November, 2022, the Plaintiff sent a notice to Defendant No. 1 and its directors on the apprehension that in the upcoming Festival at Goa in December, 2022, there was likelihood of the Defendants, unauthorizedly playing sound recordings for which the Plaintiff has exclusive rights on the basis of aforementioned assignment deeds. The Plaintiff called upon the Defendants to cease and desist from any such actions and further called upon the Defendants to contact the representative of the Plaintiff for obtaining a license for the sound recordings in which the Plaintiff has exclusive rights. It is stated in the plaint that there is no response to the said legal notice. This Court has already noted the fact that the Plaintiff served papers and also intimation about the application for interim reliefs listed before this Court today. Despite service the Defendants have chosen not to appear before this Court.

12. In order to press the ex-parte ad-interim relief at prayer clause (a), the learned Senior Counsel appearing for the Plaintiff has also brought to the notice of this Court similar orders passed in the case of the Plaintiff as well as Phonographic Performance Limited, an entity which claims such exclusive rights on the basis of similar assignment deeds executed by music labels. It is fairly brought to the notice of this Court that the Madras High Court in an order passed by the learned Single Judge has held that the Plaintiff herein will not be entitled to claim exclusive rights in the sound recordings, for the reason that it is not registered as a Copyright Society under Section 33 of the aforesaid Act. The said order is under challenge. But, it is further submitted that the Delhi High Court on the other hand in two orders has held that on a proper interpretation of the provisions of the said Act, particularly Sections 18 and 19 read with Section 30 thereof, that the Plaintiff is entitled to claim exclusive rights and to press for urgent ad-interim reliefs. In fact, in one such case, the Delhi High Court granted ad-interim relief in a similar *quia timet* action, after taking note of the aforementioned order of the Madras High Court in the case of Novex Communications Pvt. Ltd. Vs. DXC Technology Pvt. Ltd.¹. The said order was passed by the learned Single Judge of the Delhi High Court on 17th December, 2021.

13. It is also brought to the notice of this Court that the

1 2021 SCC OnLine MAD 6266

Division Bench of this Court in the case of Phonographic Performance Limited. Vs. Avion Hospitality Pvt. Ltd. & Ors. (Commercial Appeal (L) No. 100 of 2017 with connected appeals) in an order dated 22nd December, 2017, disagreed with the view of a learned Single Judge of this Court and granted ad-interim injunction on the basis that in a similar situation concerning the Plaintiff i.e. Phonographic Performance Limited, exclusive rights could be claimed by relying upon Sections 18, 19 and 30 of the said Act, notwithstanding the fact that the Plaintiff therein was not registered as a Copyright Society under Section 33 of the Act.

14. This Court is of the opinion that although the Plaintiff therein was different, the principle on which ad-interim injunction was granted would be applicable to the Plaintiff herein, since the Plaintiff has produced copies of the assignment deeds executed by various music labels that assign exclusive rights in sound recordings in favour of the Plaintiff, including On Ground Performance Rights. On that score, the Plaintiff has been able to make out a strong *prima facie* case in its favour.

15. There is also sufficient material placed on record to show that the details of such exclusive rights held by the Plaintiff are available on its website, along with fee structure that the Plaintiff charges for issuing licenses to third parties.

16. The conduct of the Defendants is crucial when this Court is considering the claims of the Plaintiff in this *quia timet* action. The earlier orders passed by this Court, referred to hereinabove indicate that the Defendant No. 2 conceded the exclusive rights held by the Plaintiff on one occasion and on another occasion undertook before this Court that it would not play the sound recordings of the Plaintiff for all its events throughout India, and that if it desired to do so, the Defendant would obtain necessary licenses from the Plaintiff.

17. It is specifically pleaded on behalf of the Plaintiff that despite such undertakings given by the Defendant No. 2, on the basis of which the earlier Suits and Interim Applications were withdrawn, the Plaintiff is likely to indulge in similar conduct.

18. Despite notice issued to the Defendants on 24th November, 2022, to which they failed to respond and in spite of the fact that the Defendants were served with notice of the present application being listed today and papers being served on the Defendants, they have chosen not to appear before this Court.

19. In the light of the material brought to the notice of this Court, particularly concerning the conduct of the Defendants in the past, the documents placed on record such as the assignment deeds *prima facie* indicating the exclusive rights held by the Plaintiff in

sound recordings concerning seven music labels and the orders passed by this Court on earlier occasions, including the view expressed by the Division Bench of this Court as regards applicability of Sections 18, 19 and 30 of the aforesaid Act in the context of a similarly situated Plaintiff, this Court is of the opinion that a strong *prima facie* case is made out by the Plaintiff in its favour.

20. This Court is also of the opinion that there is sufficient material to show that the Defendants may violate the exclusive rights held by the Plaintiff in the aforementioned sound recordings, particularly in the backdrop of the past conduct of the Defendants and that therefore, if ad-interim relief, as prayed, is not granted, the Plaintiff is likely to suffer grave and irreparable loss. This further indicates that balance of convenience is also in favour of the Plaintiff. In any case, if the Defendants wish to play sound recordings from the repertoire for which the Plaintiff holds exclusive rights, nothing prevents the Defendants from obtaining license from the Plaintiff in that regard.

21. In view of the above, there shall be ad-interim relief in terms of prayer clause (a), which reads as follows:

“a) that pending the hearing and final disposal of this Suit, this Hon’ble Court be pleased to issue a temporary order of injunction against restraining Defendants, its directors, their servants, employees,

agents, assignees, licensees, representatives and/or any person claiming through them or acting on their behalf, from publicly performing or in any manner communicating the sound recordings of the songs assigned and authorised to the Plaintiff or allowing their premises or any premises under their control to be used for the said purposes or otherwise infringing the copyright in any work owned and protected by the Plaintiff;”

22. It is clarified that the ad-interim relief granted hereinabove will not come in the way of Defendants applying to the Plaintiff for grant of license, in the event they wish to play the sound recordings in respect of which the Plaintiff holds exclusive copyright.

23. List this application for further consideration on **10th February, 2023**. The ad-interim relief will continue to operate till then.

(MANISH PITALE, J.)