

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INTERIM APPLICATION (L) NO.39449 OF 2022  
IN  
COMMERCIAL IP SUIT (L) NO.39446 OF 2022

Phonographic Performance Limited ... Applicant / Plaintiff

Vs.

Ambuja Neotia Holdings Private Limited and others ... Respondent / Defendant

Mr. Sharan Jagtiani, Senior Advocate a/w. Mr. Amogh Singh, Mr. Asmant Nimbalkar, Mr. Hero Ramchandani, Ms. Apurva Manwani and Mr. Neeraj Nawar i/b. Mr. D. P. Singh for Applicant / Plaintiff.

Mr. Nirman Sharma a/w. Mr. Jayantakar K. i/b. Pariket Shah for Defendant.

**CORAM : MANISH PITALE, J**

**DATE : 19<sup>TH</sup> DECEMBER, 2022**

**P.C. :**

Heard Mr. Jagtiani, learned senior counsel appearing for the applicant / plaintiff.

2. The plaintiff has moved for grant of urgent ad-interim reliefs. According to the plaintiff, the defendants were served on Friday (16.12.2022) evening by email and physically on Saturday (17.12.2022). It is submitted that considering the earlier events that took place in the course of the plaintiff's asserting its rights *qua* other parties as also the defendants herein, the plaintiff is entitled to press for grant of urgent ad-interim reliefs.

3. Mr. Sharma, learned counsel has appeared on behalf of the defendants. He submits that *Vakalatnama* would be filed in due course.

4. The plaintiff claims to own and control as licensee the public performance

rights of around 400 music labels, with more than 45 lakhs of international and domestic sound recordings. It claims to be exclusively entitled to grant licences for communication to the public / public performance of its repertoire of sound recordings under Section 30 of the Copyright Act, 1957. It is stated that the details of such sound recordings are available on its website, as specifically mentioned in paragraph No.6 of the plaint.

5. Learned senior counsel appearing for the plaintiff submits that the plaintiff has been issuing event-specific or annual licences for broadcast of such sound recordings in which, the plaintiff holds copyrights and assignment deeds have been executed with various third parties in this context.

6. It is alleged that in the premises of the defendants, sound recordings of which the plaintiff holds copyrights, have been unauthorizedly broadcasted, thereby infringing its rights. In support of the said contention, the plaintiff has placed on record affidavits of its authorized representatives, who visited the premises of the defendants, alongwith the VCD/DVD of such alleged recordings.

7. Learned senior counsel appearing for the plaintiff submitted that in the light of the affidavits of the authorized representatives of the plaintiff on record, there is sufficient material to indicate that the defendants are violating the rights available to the plaintiff. It is submitted that on an earlier occasion, in the year 2021, the plaintiff had filed a suit, asserting its rights against about 600 defendants, including the defendants herein. The said suit was withdrawn. A statement in that regard is made in paragraph 48 of the plaint. It is submitted that notwithstanding the withdrawal of the aforesaid suit, in the light of the law recognized by this Court in the case of *Maganlal Savani and another Vs. Uttam Chitra and others*, **2008 SCC OnLine Bom. 292**, each infringement of its rights gives a distinct and separate cause of action to the plaintiff and that therefore, the

plaintiff is entitled to maintain the present suit and to press for urgent ad-interim reliefs, notwithstanding withdrawal of the earlier suit filed in the year 2021. It is emphasized that in the present case, the specific incidents involving violation of its rights by the defendants have been placed on record along with the affidavits of the authorized representatives of the plaintiff, and that therefore, this Court may consider granting ad-interim reliefs, as prayed.

8. Learned senior counsel for the plaintiff has also relied upon the order dated 22.12.2017 passed by the Division Bench of this Court in Commercial Appeal (L) No.100 of 2017 and connected appeals, wherein the Division Bench of this Court found that the plaintiff was indeed entitled to assert its rights holding copyright in the repertoire of sound recordings, indicated hereinabove. It is further submitted that the plaintiff is pressing for urgent ad-interim reliefs for the reason that the defendants are proposing to organize an event on 31.12.2022, wherein the plaintiff apprehends that its sound recordings will be unauthorizedly played. Hence, according to the plaintiff, there is urgency in the matter.

9. Mr. Sharma, learned counsel, who has appeared on behalf of the defendants, submits that this Court ought not to consider the question of grant of ad-interim reliefs today for the reason that the papers were served on the defendants only on Saturday (17.12.2022), thereby depriving the defendants sufficient notice to respond. It was submitted that even according to the contents in the plaint and the affidavits of the representatives of the plaintiff, the cause of action arose on 13.10.2022 and that the suit was filed in the last week and it has been immediately moved today for grant of ad-interim reliefs. Learned counsel for the defendants submits that a fair opportunity ought to be granted to the defendants to file reply to the present application, before considering the question of grant of ad-interim reliefs. Learned counsel further submitted that the plaintiff had filed the earlier suit in the year 2021 for identical reliefs, wherein

the defendants were parties. On the said occasion, ad-interim relief was refused to the plaintiff and subsequently, the said suit admittedly stood withdrawn unconditionally, and that therefore, this Court ought not to consider the prayer for grant of ad-interim relief today.

10. It is asserted that the admitted facts indicate acquiescence on the part of the plaintiff and that in any case, even if the plaintiff succeeds, it can be awarded damages. Learned counsel vehemently submitted that the plaintiff had suppressed vital material from this Court by not placing on record response by email sent on behalf of the defendants to the legal notice sent on 18.11.2022 onwards, and also the responses of the defendants in the earlier round of litigation, including a reply dated 27.08.2021, sent on behalf of the defendants, copy of which was handed over to this Court. On this basis, it was submitted that a short adjournment may be granted for filing reply and only thereafter, the prayer for grant of ad-interim reliefs may be considered.

11. This Court has heard learned counsel for rival parties. On the basis of the pleadings in the plaint and the material brought to the notice of this Court, including the order passed by the Division Bench of this Court referred to hereinabove, as also the earlier orders passed in favour of the plaintiff granting ad-interim reliefs, including the orders passed in the recent past, this Court is inclined to take up the application for considering the prayer for grant of ad-interim reliefs.

12. In so far as the objections raised on behalf of the defendants, this Court finds that the emphasis placed on behalf of the defendants on filing of the earlier suit and withdrawal of the same, alleging suppression on the part of the plaintiff, at this stage, does not appear to be convincing for the reason that in paragraph 48 of the plaint, a specific reference is made to the earlier suit and its withdrawal.

There is substance in the contention raised on behalf of the plaintiff that as per the law recognized by this Court in the case of **Maganlal Savani and another Vs. Uttam Chitra and others** (*supra*), on each occasion when there is infringement of the rights claimed by the plaintiff, a distinct and a separate cause of action arises for the plaintiff to approach the Court. Therefore, at this stage, this Court is not inclined to accept the contention of the defendants that even the consideration for grant of ad-interim relief ought to be postponed, because of the earlier litigation or alleged suppression on the part of the plaintiff.

13. In so far as suppression of emails sent on behalf of the defendants to the legal notices sent by the plaintiff from 18.11.2022 onwards, this Court has specifically perused a copy of the reply dated 27.08.2021 sent on behalf of the defendants to the plaintiff, in the context of the earlier suit filed in the year 2021. This Court finds that the issues raised in the said response on behalf of the defendants are the issues concerning interpretation of the provisions of the Copyright Act, 1957, particularly Sections 18, 19, 30 and 33 thereof. At this stage, as noted above, this Court is inclined to consider the prayer for grant of ad-interim relief on the basis of the aforementioned order of the Division Bench of this Court, which does consider the said aspects of the matter.

14. In so far as lack of adequate notice is concerned, it is asserted on behalf of the plaintiff that email regarding filing of the present suit was served on the defendants on Friday (16.12.2022) evening and copies of the papers were served on the defendants on Saturday (17.12.2022). It is an admitted position that the defendants were parties to the earlier suit filed in the year 2021, wherein the plaintiff had asserted its rights on the basis of holding copyright for the sound recordings in question. Reference to the reply dated 27.08.2021, on behalf of the defendants, is already brought to the notice of this Court. The material brought to the notice of this Court, therefore, indicates that in the light of the said

documents, particularly the legal notices issued on behalf of the plaintiff from 18.11.2022 onwards, the defendants were sufficiently aware about the nature of rights being asserted by the plaintiff and that service of the papers only on Friday (16.12.2022) or Saturday (17.12.2022) would not mean that the defendants were caught by surprise. It is not denied on their behalf that there is indeed an event that is planned for 31.12.2022, and therefore, there is urgency in the matter and this Court is convinced that the prayer for grant of ad-interim relief ought to be considered today itself.

15. This Court has considered the material on record, particularly the pleadings in the plaint and the contents of the six affidavits of the representatives of the plaintiff, wherein it is asserted that the defendants have been playing sound recordings for which the plaintiff claims copyright, without obtaining any licence from the plaintiff. The pleadings on record, at this point in time, are found to be sufficient to make out a strong *prima facie* case in favour of the plaintiff. This Court is convinced that unless ad-interim relief is granted, the plaintiff is likely to suffer grave and irreparable loss, and therefore, the balance of convenience is in favour of the plaintiff.

16. In view of the above, there shall be ad-interim relief, till the next date of listing, 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 an order of injunction against restraining Defendant, its partners, directors, their servants, employees, agents, assignees, licensees, representatives, third party event management companies, or otherwise 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 and or any premises under their control to be used for the said purposes, without obtaining non-exclusive public performance rights in sound recordings from the Plaintiff, or otherwise infringing the copyright in any work owned and protected by the Plaintiff;”

17. List the application for further consideration on 10.02.2023.
18. It is clarified that despite ad-interim relief granted hereinabove, the defendants would be at liberty to apply to the plaintiff for grant of licence.

**(MANISH PITALE, J)**

*Minal Parab*