

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODGING) NO. 39450 OF 2022
IN
COMMERCIAL IP SUIT (LODGING) NO. 39448 OF 2022

Phonographic Performance Limited ... Applicant / Orig. Plaintiff

vs.

GRT Hotels and Resorts Pvt Ltd and ors. ... Defendants

Mr. Sharan Jagtiani, Senior Counsel a/w. Mr. Amogh Singh, Mr. Asmant Nimbalkar, Mr. Hero Ramchandani, Ms. Apurva Manwani and Mr. Neeraj Nawar, i/by. Mr. D. P. Singh for applicant/plaintiff.

Mr. Rajeev Ravi for defendants.

CORAM : MANISH PITALE, J

DATE : 19th DECEMBER, 2022

P.C. :

1. The defendants were served with the papers and they are represented by counsel.

2. Heard learned counsel for the parties.

3. 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.

4. The 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.

5. Learned senior counsel for the plaintiff has invited attention of this Court to the pleadings in the plaint, as well as the documents filed on behalf of the plaintiff. It is submitted that a representative of the plaintiff had visited the premises of the defendants on 4th August, 2022 and it was found that certain sound recordings, for which the plaintiff holds copyright, were allegedly played in the premises of the defendants. The affidavit of the said representative is on record with a VCD/DVD of the recordings played on 4th August, 2022, in the premises of the defendants. Attention of this Court is then invited to the notice dated 17th August, 2022, issued on behalf of the plaintiff, calling up the defendants to cease and desist from playing the sound recordings and to apply for licence, in case they wish to play sound recordings, for which the plaintiff claims copyright. It is submitted that there is urgency in the matter, for the reason that the defendants intend to organize a new year event on 31st December, 2022, in respect of which, certain documents are placed on record.

6. Learned senior counsel for the plaintiff has also relied upon the order passed by the Division Bench of this Court on 22nd December, 2017, in Commercial Appeal (Lodging) No.100 of 2017 and connected Appeals filed by the plaintiff herein. Therefore, a *prima facie* case is indeed made out by the plaintiff as regards its claim of holding copyright in the said repertoire of

sound recordings. In the said order, the Division Bench of this Court differed with the opinion of a learned Single Bench of this Court pertaining to Section 33 of the aforesaid Act and it was held that *prima facie*, the plaintiff was entitled to assert its rights in the said sound recordings.

7. Mr. Ravi, learned counsel for the defendants submits that in response to the notice issued by the plaintiff, a reply was sent, wherein the defendants sought clarifications from the plaintiff as to the nature of rights that they were asserting. The learned counsel relied upon an order passed by the learned Single Judge of the Madras High Court in the case of ***Novex Communications Pvt. Ltd. v/s. DXC Technology Pvt. Ltd.***, to contend that in the absence of registration, it could not assert rights in the said sound recordings. On this basis, it was submitted that ad-interim relief may not be granted or that a direction may be given that the recording of the proposed event would be preserved, in order to examine the rival contentions on a future date.

8. This Court has perused the material on record. There are sufficient pleadings in the plaint to indicate the basis on which, the plaintiff is asserting its rights in the said sound recordings. It is specifically stated in paragraph No.6 of the plaint as to the availability of the copyrighted works and agreements that the plaintiff has been executing in such cases with third parties. Such material is available on the website of the plaintiff. This fact is also mentioned in the legal notice dated 17th August, 2022, issued to the defendants.

9. As regards reliance placed on the order of the learned Single Judge of the Madras High Court, it is a matter of record that a similar view taken by

the learned Single Judge of this Court was set aside by the Division Bench of this Court on the basis of Sections 18, 19, 30 and 33 of the Copyright Act, 1957, thereby indicating that the plaintiff could assert its rights in the aforementioned sound recordings.

10. Therefore, this Court is convinced that a strong *prima facie* case is made out by the plaintiff in its favour. Unless urgent ad-interim relief is granted in favour of the plaintiff, it is likely to suffer grave and irreparable loss. Thus, the balance of convenience also lies in the favour of the plaintiff.

11. 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 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;

12. List the application for further consideration on 10th February, 2023.

(MANISH PITALE, J)

Priya Kambli