

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INTERIM APPLICATION (LODGING) NO. 37367 OF 2022  
IN  
COMMERCIAL IP SUIT (LODGING) NO. 37362 OF 2022

Phonographic Performance Ltd ... Applicant / Orig. Plaintiff

vs.

Mayfair Hotels & Resorts Ltd and ors ... Defendants

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

Mr. Prasad Shenoy a/w. Mr. Saket Mone and Mr. Abhishek Salian, i/by. Vidhi Partners for defendant No.1.

**CORAM : MANISH PITALE, J**

**DATE : 20<sup>th</sup> DECEMBER, 2022**

**P.C. :**

. The defendants herein were served privately and they are represented by counsel.

2. 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.

3. 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.

4. 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 affidavit of its authorized representative, who visited the premises of the defendants, alongwith the VCD/DVD of such alleged recordings.

5. This Court is of the opinion that in the light of the order passed by the Division Bench of this Court on 22<sup>nd</sup> December, 2017, in Commercial Appeal (Lodging) No.100 of 2017 and connected Appeals filed by the plaintiff herein, 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.

6. The learned counsel for the defendant No.1, on instructions, submitted that without prejudice to the rights and contentions of the said defendant, firstly, the defendant shall not play at its premises the sound recordings, for which the plaintiff claims to hold copyrights, without obtaining a proper licence/permission from the plaintiff and secondly, it shall permit sound

recordings, for which the plaintiff claims copyrights, to be played by its customers at the premises of the defendant, only after such customers/third parties obtain licence/permission from the plaintiff for playing such sound recordings. The aforesaid statements are accepted and recorded.

7. In the context of the aforesaid statements, learned counsel for the plaintiff submits that in case the third parties/customers of the defendants violate the licence/permission that may be granted by the plaintiff, the defendants would be held responsible. The learned counsel for the defendant No.1 opposes the said contention raised on behalf of the plaintiff. The said question is kept open.

8. It is submitted on behalf of the defendants that one of the hotels/resorts at Goa, using the trade mark of the defendant No.1, has a franchisee hotel/resort, in respect of which, the defendants will provide details to the plaintiff.

9. Leave is granted to the plaintiff to amend the plaint in that regard, in order to seek ad-interim relief against the owner of the hotel, who has entered with a franchisee agreement with defendant No.1.

10. The application be listed for further consideration on 10<sup>th</sup> February, 2023.

11. In the meanwhile, defendants may file their reply affidavit within four weeks from today.

**(MANISH PITALE, J)**

*Priya Kambli*