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Form
No.9
(Civil)
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**IN THE COURT OF THE XVIII ADDITIONAL CITY CIVIL JUDGE
AT BANGALORE CITY**

PRESENT: SRI PADMA PRASAD

**B.A.(Law) LL.B.,
XVIII Additional City Civil Judge.**

Dated this the 22nd day of February 2023

ORIGINAL SUIT No.4607/2022

PLAINTIFF:

Prashanth Hotels Pvt. Ltd.,
A company limited by Shares,
Having its registered office at,
Hotel Rajamahal, No.33-34,
Seshadri Road, Bangalore
Sheshadri Road,
Bangalore-560 009.

Represented by its
Manager Human Resources,
Mr. Anil Kumar Gowda,
S/o S.J. Lakshme Gowda,
Aged about 33 years, Mysore.

[By Ms. Akshatha M. Patel, Advocate]

/v e r s u s/

DEFENDANTS:

1. Phonographic Performance Limited, Having its office at, Unit No.205, 2nd Floor, Prestige Infantry Court, # 130, Infantry Road, Bangalore-560 001, Represented by its authorised signatory.

2. Novex Communications Pvt. Ltd., Having its registered office at, B -301, RemiBizCourt, Plot No.9, Shah Industrial Estate, Off Veera Desai Road, Andheri (West), Mumbai -400058. Represented by its authroised signatory.

Also at:

177, 20, 49th Cross Road,
3rd Block, Rajajinagar,
Bengaluru, Karnataka 560 010.

D1 – By Sri TBS, Advocate

D2 – By Sri A.G. Advocate

ORDERS ON IA NO. 4 & 5

IA No.4 filed by the defendant no.2 under Section 151 of CPC r/w proviso to Section 60 of the Copyright Act praying to dismiss the suit as infructuous.

2. The said application is supported with authorized signatory of defendant no.2 wherein it is stated that the written statement of the defendant to be read as part and parcel of affidavit.

3. The case made out by the defendant no.2 is that, the plaintiff filed the present suit on the basis of legal notice dated 29/5/2019 issued by the defendant no.2 for infringement of second defendant's Copyright

claiming that amounts to a groundless threat under Section 60 of the Copyright Act. The second defendant at present filed a suit before the Hon'ble High Court of Bombay in COMIPL/34575/2022 against the plaintiff for the infringement of second defendant's Copyright. Accordingly claimed that the defendant no.2 has filed a substantive suit before the Hon'ble High Court of Bombay for infringement of Copyright that has been admitted by the plaintiffs in its memo dated 7/11/2022. The defendant claims that in view of the filing of comprehensive suit by the defendant no.2 against the plaintiff for the infringement of Copyright, the suit is not maintainable as per the proviso to Section 60 of the Copyright Act. Accordingly prayed for dismissal of suit.

4. Similarly defendant no.1 filed IA No.5 under Section 151 of CPC r/w Section 60 of the Copyright Act praying to dismiss the suit since the suit has become infructuous as per proviso to Section 60 of the Copyright Act.

5. The said application supported with State Head (Karnataka Region) of defendant no.1 namely Waseemuddin, wherein he stated that the plaintiff filed this suit against the defendant no.1 for declaration and permanent injunction under Section 60 of the Copyright Act restraining the defendant against the issuance of groundless threats of legal proceedings. The defendant no.1 with due diligence has commenced and is prosecuting an action for infringement of the Copyrights claimed by the defendant no. 1 and filed a civil suit against the plaintiff before the Hon'ble High Court of Bombay in Commercial I.P. suit (L) No. 35123/2022 and also filed an interim application in the said case. Accordingly, the defendant no.1 claimed that in view of the filing of said suit by the defendant no.1 before the Bombay High Court, this suit has become infructuous, accordingly prayed for dismissal of suit.

6. The plaintiff filed common statement of objections to IA No.4 and 5 claiming that the application is not maintainable either under law or on

facts. The main objection raised by the plaintiff is that, the aforesaid two suits are filed by the defendant no.1 and 2 are subsequent to the filing of the present suit. Hence, the same is barred under law as per Section 10 of CPC. It is also stated that the defendant no.2 in the suit claimed injunction against the various Copyright violation including wedding related festivities for celebration like cocktail parties, bachelor parties etc., and the defendant no.2 filed a general injunction suit for violation of the sound recordings owned by defendant no.1. The plaintiff claims that the cause of action is not directly relevant and the suits are nothing but an afterthought of the defendants to defeat the relief of the plaintiff in the suit.

The plaintiff in the suit has sought specific and clear declaration before the court and not a blanket injunction or any other interpretation of law. The plaintiff also claims that a declaration that the utilization of any sound recording in the course of religious ceremony including marriage procession and

other social festivities associated with a marriage does not amount to infringement of Copyrights, and hence no license is required to be obtained for the said purpose.

The plaintiff also claimed that the proviso to Section 60 is not applicable to the suits already filed, and among other grounds prayed for dismissal of IA No.4 and 5.

7. On the basis of the above, points for consideration is - **“Whether the suit of the plaintiff has become infructuous in view of the filing of suits by defendant no.1 and 2 as per proviso to Section 60 of Copyright Act?”**

8. Heard the arguments. Perused the materials on record. The learned advocate for the plaintiff filed written arguments as well as following citations:

1. Bristol-Myers Squibb Holdings Ireland Unlimited Company and Ors. Vs. Natco Pharma MANU/ DE/0185/2020.

2. MANU/MH/0255/2012, Dhiraj Dharamdas Dewani Vs. Sonal Info Systems Pvt. Ltd., and Ors.

3. National Institute of Mental Health and Neuro Sciences Vs. C. Parameswara (13.12.2004 – SC): MANU/SC/1063/2004.

4. Radio today Broadcasting Ltd., Vs. Indian Performing Rights Society Ltd., and Ors. (26.09.2008 -CALHC): MANU/WB/0679/2008.

5. Municipal Corporation of Delhi Vs. Gurnam Kaur (12.09.1988 – SC) : MANU/SC/0323/ 1988.

6. Deific Abode LLP and Ors. Vs. Union of India and Ors. (16.04.2021 -CALHC): MANU/WB/0351/2021.

7. Music India Ltd., Vs. Super Cassettes Industrial Pvt. Ltd., and Ors. (14.1.1987 – BOM HC): MANU/MH/0827/1987.

8. Supmer Cassette Industries Ltd., Vs. Bathla Cassettes India (P) Ltd., (04.02.1993 – DELHC) : MANU/DE/0248/1993.

9. Special Leave Petition © No.39994 of 2012 M/s MAC CHARLES (I) Ltd., Vs. M/s Indian Performing Rights Society Ltd.,

10. QD Seatamon Designs Private Limited Vs. P.Suresh (20.11.2018 – MADHC): MANU/TN/7439/2018.

9. The learned advocate for the defendants filed written arguments and learned advocate for the defendant no.2 has filed separate written synopsis as well as citation viz., *The Indian Performing Right Society Ltd., Vs. MAC CHARLES (INDIA) LIMITED dated 4/10/2012 on Z.A.No.8165/2011 in CS(OS) 700/2011 before the Hon'ble High Court of Delhi.*

10. My findings on the above point is in the **affirmative**, for the following:

REASONS

11. The plaintiff filed the present suit under Order VII Rule 1 and 2 r/w Section 26 of CPC 1908 r/w Section 60 of Copyright Act. The specific claim of the plaintiff in the suit is that the defendants have given groundless threat, accordingly prayed to declare that the threat contained in the notice dated 29/5/2019 and the contents of email dated 10/5/2022 is amounts to copyright infringement constituted a groundless threat of legal action under Section 60 of the Copyright Act. Accordingly the plaintiff prayed to restrain the defendants or anybody

claiming under them from issuing groundless threats of legal action and interfering with the plaintiff's business. Therefore, the suit is totally based on Section 60 of the Copyright Act claiming that the defendants are giving a groundless threats of legal action.

12. The defendants 1 and 2 after appearing in this case filed a two suits for the infringement of Copyright before the Hon'ble High Court of Mumbai in COMIPL/34575/2022 and COMMERCIAL IP SUIT (L) No.35123/2022 and also filed interim application against the plaintiff.

13. On the basis of filing of the aforesaid two suits, the defendants claims that the suit has become infructuous as per the proviso to Section 60 of the Copyright Act.

14. This suit is based on Section 60 of the Copyright Act and the defendant no.1 and 2 claims that suit has become infructuous as per the proviso to Section 60 of the Copyright. Hence it is just and

necessary to note the said provision of law, that reads as -

“60. Remedy in the case of groundless threat of legal proceedings.

Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained [in section 34 of the Specific Relief Act, 1963 (47 of 1963)] institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit-

(a) obtain an injunction against the continuance of such threats and

(b) recover such damages, if any, as he has sustained by reason of such threats:

PROVIDED that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action

for infringement of the copyright claimed by him.”

15. The aforesaid Section 60 of the Copyright Act speaks about the remedy in the case of groundless threat of legal proceedings. The plaintiff invoking the said provision of law instituted the present suit on the basis of notice dated 29/5/2019 and email dated 10/5/2022 issued by the defendant no.2. The defendant no.1 and 2 after appearing in this case filed suit for infringement of their Copyright as aforesaid. Accordingly claimed that in view of the filing of a suit for infringement of their Copyright, the present suit of the plaintiff has become infructuous in view of the proviso to Section 60. The proviso clearly says that t Section 60 is not applicable to any threats with due diligence commences and prosecute an action for infringement of the Copyright claimed by him. Now in the case on hand, the defendant no.1 and 2 have already filed suit for infringement of Copyright. The counsel for the plaintiff much argued that the said suits of defendant no.1 and 2 before the Mumbai High

Court is subsequent to the filing of present suit. Hence the said suits are liable to be stayed under Section 10 of the CPC, and relied on a decision of the Calcutta High Court rendered in a case of Radio Today Broadcasting Ltd., Vs. Indian Performing Right Society Limited and others where in is held that suit under Section 60 does not become infructuous if the defendants files an infringement suit subsequently under the proviso of Section 60 of Copyrights Act. Accordingly, claimed that the application liable to be dismissed.

16. Per contra, the counsel for the defendants relied on a decision of Hon'ble Supreme Court of India in a case of M/s Mac Charles (I) Ltd., Vs. M/s Indian Performing Rights Society Ltd., in a case of Special leave Petition © No. 39994/2012, and the decision of Madras High Court in a case of Q.D Seatamon Designs Private Limited Vs. P. Suresh in a case of Appl.No.6025 of 2018 in C.S.No.632/2017.

17. The Hon'ble Apex Court in the case of Mac Charles at para no.2 held as under-

“The Judgment and order in the matter of ‘Super Cassette Industries Ltd., Vs. Bathla Cassettes India (P) Ltd., AIR 1994 Del 237, has further clarified the proviso which makes the position clear that this Section will have no application if a person who has made such threats commences and prosecutes with due diligence an action for infringement of the copyright claimed by him. Once a suit is filed for infringement of the Copyright by the person who has given the threat, the suit under Section 60 becomes infructuous as the Section ceases to apply in such a situation.”

18. The Hon'ble High Court of Madras in the aforesaid case of Q.D.Seatamon Designs Private Ltd., held that though the suit for infringement is subsequent then also the earlier suit for infringement has become infructuous.

19. The decisions relied by the plaintiff cannot be considered in view of the principles subsequently laid down by the High Court of Madras as well as the

principles laid down by Hon'ble Apex Court. In view of these facts, the other contentions raised by the plaintiff can be agitated in the comprehensive suit filed by the defendant no.1 and 2 for the infringement of Copyright.

20. As the IA No.4 and 5 are filed under the proviso to Section 60 and the suit is filed for a groundless threat as contemplated under Section 60 of the Copyright Act, this court restricted its discussion only to Section 60 and its proviso and not discussed the merits of the case.

21. In view of the filing of aforesaid comprehensive suits by the defendant no.1 and 2 for the infringement of Copyright, certainly this suit becomes infructuous as per the proviso to Section 60 of the Copyright Act. Accordingly, the above point is answered in affirmative. In the result, following:

ORDER

- IA No. 4 and 5 filed by the defendant no. 2 and 1 respectively under Section 151 of

CPC r/w proviso to Section 60 of the Copyright Act are hereby allowed. Consequently the suit of the plaintiff is hereby dismissed as infructuous in view of the filing of comprehensive suit before the Hon'ble High Court of Mumbai in COMIPL/34575/2022 and COMMERCIAL IP SUIT (L) No.35123/2022.

* * *

[Dictated to the Judgment Writer directly on computer, *Script* corrected, signed and then pronounced by me, in the Open Court on this the 22nd day of February 2023.]

[PADMA PRASAD]
XVIII Additional City Civil Judge.
BANGALORE.

...Order pronounced in the Open Court.... (Vide separate detailed order..)

- IA No. 4 and 5 filed by the defendant no. 2 and 1 respectively under Section 151 of CPC r/w proviso to Section 60 of the Copyright Act are hereby allowed. Consequently the suit of the plaintiff is hereby dismissed as infructuous in view of the filing of comprehensive suit before the Hon'ble High Court of Mumbai in COMIPL/34575/2022 and COMMERCIAL IP SUIT (L) No.35123/2022.

[PADMA PRASAD]
XVIII Additional City Civil Judge.
BANGALORE.

