



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 2987 OF 2022
IN
COMMERCIAL IP SUIT NO. 297 OF 2022**

Shemaroo Entertainment Ltd. ... Applicant/Plaintiff

vs.

Super Cassettes Industries Pvt. Ltd. & ors. ... Respondents/Defendants

Mr. Sharan Jagtiani, Senior Counsel a/w Mr. Hiren Kamod, Mr. Mahesh A. Mahadgut, Mr. Prem Khullar, Ms. Poonam Teddu, Mr. Siddharth Joshi and Mr. Kaivalya Shetye, i/by. Mahesh Mahadgut for applicant/plaintiff.

Mr. Ravi Kadam, Senior Counsel a/w Mr. Harsh Kaushik, Ms. Abhilisha Nautiyal, Ms. Zahra Padamsee and Mr. Kyle Curry, i/by. Vashi and Vashi for respondent/defendant No.1.

Mr. Amit Jamsandekar a/w. Mr. Nayan Mahar, i/by. Khaitan Legal Associates for defendant No.2.

Mr. Abhinav Tripathi, representative of applicant/plaintiff.

**CORAM : MANISH PITALE, J
RESERVED ON : 1st MARCH, 2023
PRONOUNCED ON : 5th JUNE, 2023**

ORDER

. By this application, the applicant/plaintiff has sought various interim reliefs during pendency of the suit, but essentially, it is seeking a direction against defendant No.1 from infringing the copyrights in the suit films by allegedly, illegally publishing audio-visuals pertaining to songs of the suit films on various channels on YouTube platform of defendant no.3, without requisite permission/licence from the plaintiff.

2. The suit is filed by the plaintiff claiming copyright in 24 cinematographic films, details of which have been given at Exhibit A

annexed to the plaint.

3. The plaintiff claims to be the absolute owner of the copyright subsisting in the said films, particularly the audio-visual songs. The plaintiff has claimed such absolute copyright on the basis of agreements executed in its favour by various entities. According to the plaintiff, all such rights, including rights in the audio-visuals of songs contained in the films, have been duly assigned to it by the original owners/producers through various agreements/assignments.

4. On the other hand, the defendant No.1 claims rights in the said films, which it has exercised limited to the audio-visuals of songs contained in the said films, in terms of agreements/assignments executed in its favour by the original producers/owners. It is the case of the defendant No.1 that the original producers have never raised any objection to such exploitation of audio-visuals of songs of the said films by the defendant No.1 and on this basis, it is claimed that no case is made out for grant of interim reliefs.

5. The chronology of events, in brief, leading to filing of the present suit and the application for interim reliefs, is that between 1985 and 1990, various assignment deeds were executed in respect of the suit films in favour of defendant No.1. According to the plaintiff, appropriate interpretation of the said assignment deeds would show that only audio rights were assigned to the defendant No.1 and nothing beyond that. This is disputed by the defendant No.1.

6. According to the plaintiff, between April 2004 and April 2016, various producers of the suit films/assignees executed assignment deeds in favour of

the plaintiff, whereby it acquired sole, exclusive and absolute ownership of the suit films, including the negative rights in the suit films. The plaintiff claims to have been exploiting such rights since the year 2006. It has given instances of individual films being exploited in such manner over a period of time.

7. It is further claimed that on 21st May, 2014, the plaintiff gave a temporary non-exclusive license to defendant No.2 to exploit some of the contents of suit films. This was for a limited period between 1st May, 2014 and 30th April, 2015. According to the plaintiff, the defendant No.2 illegally exploited the works of the plaintiff even after expiry of the said license period.

8. On becoming aware of such instances, on 18th January, 2016, the plaintiff sent a Cease and Desist notice to the defendant No.2. On 3rd February, 2016, the defendant No.2 sent a reply alleging that under a licence agreement by a third party, the said defendant had acquired satellite broadcasting rights in the songs in one of the suit films. At this stage, on 11th February, 2016, the plaintiff demanded that the defendant No.2 should produce its link documents on the basis of which it claimed rights to exploit the songs of the said films.

9. Since no arrangements could be worked between the plaintiff and the defendant No.2, the plaintiff was constrained to send another Cease and Desist notice on 15th February, 2017. In response, on 14th March, 2017, defendant No.2 stated that it had acquired rights to telecast songs of the suit films through various third parties, who claimed to be the owners in respect of such songs. One such license was given by the defendant No.1. On 21st

March, 2017, the defendant No.1 sent a communication to the plaintiff, stating that assignment agreements were executed between the producers of the original films (Seven in number) in favour of the defendant No.1 and that all rights in the audio-visuals of songs of the films were assigned in favour of the said defendant. In fact, the defendant No.1 claimed that it was the exclusive owner of the all copyrights in the audio-visuals of songs contained in the suit films and further that it was entitled to enter into license agreement in respect thereof.

10. On 3rd January, 2018, Sony Pictures Networks India Pvt. Ltd. requested the plaintiff to confirm that it had exclusive rights in respect of the suit films before licence was renewed or obtained from the plaintiff. The plaintiff was shocked to realize that as per the said communication, the defendant No.1 was claiming rights in songs pertaining to at least two suit films. The plaintiff promptly informed Sony Pictures Networks India Pvt. Ltd. that the defendant No.1 did not hold any rights in the said films or the audio-visuals of the songs contained therein. In this context, a number of communications were exchanged between the plaintiff and the Sony Pictures Networks India Pvt. Ltd. and the nature of the responses received by the plaintiff indicated that the defendant No.1 had been asserting its rights in such audio-visuals of songs.

11. In this backdrop, the plaintiff started receiving notifications from the defendant No.3 – Google India Pvt. Ltd. about strikes issued by defendant No.1 in respect of suit films uploaded on YouTube channels of the plaintiff. Although, the plaintiff strongly contested such strikes and notices, as per policy of YouTube, it took no decision in the matter and the infringing content stood reinstated.

12. In this backdrop, on 22nd January, 2019, the plaintiff issued a Cease and Desist notice to the defendant No.1, calling upon the said defendant to amicably resolve the disputes. The defendant No.1 denied the claims of the plaintiff. The plaintiff alleges that while the defendant No.1 suggested that the disputes could be resolved amicably, it continued to exploit the works in which the plaintiff claimed exclusive copyright. This ultimately led the plaintiff to file the present suit alongwith the application for interim reliefs.

13. Mr. Sharan Jagtiani, learned Senior counsel appearing for the plaintiff submitted that the plaintiff has exclusive rights in the 24 suit films on the strength of agreements executed in its favour. It is specifically claimed that negative rights in respect of the suit films have been duly assigned in favour of the plaintiff by the original owners/producers and their assignees. As a consequence, the plaintiff is entitled to seek appropriate interim reliefs, pending the suit, against the defendant No.1, restraining the said defendant from infringing the copyright of the plaintiff in the suit films.

14. Before referring to the contents of the assignment deeds executed in favour of the plaintiff, the learned Senior counsel appearing for the plaintiff referred to the compilation of documents produced by the defendant No.1 containing the assignment deeds executed in favour of the said defendant. By referring to some of the agreements and the clauses contained therein, the learned Senior counsel appearing for the plaintiff submitted that assignment agreements/deeds executed in favour of the defendant No.1, read as a whole, would show that only audio rights were assigned in favour of the said defendant. It was further submitted that the object and purpose of such agreements was clear from their contents. It was emphasized that

while in the written statement, the defendant No.1 claimed exclusive rights in the entire suit films, during the course of arguments it was conceded that rights had been exploited and were being exploited by defendant No.1 only in respect of audio-visuals of songs contained in the suit films and certain video clippings, further clarifying that the defendant No.1 was not claiming right to reproduce the entire suit films. On this basis, it was contended that the defendant No.1 itself had climbed down from its stated stand in the written statement, thereby indicating that the plaintiff had clearly made out a strong *prima facie* case in its favour.

15. The learned Senior counsel for the plaintiff specifically referred to assignment deed dated 17th November, 1989, executed by the original producer of film “Amba” in favour of defendant No.1. Much emphasis was placed on the definition clause in the assignment deed, as also other clauses pertaining to the assignment, delivery, royalty and adaptation, to claim that the only right assigned to the defendant No.1 was in the audio recordings of the songs of the said film. It was further submitted that the defendant No.1 was misinterpreting clauses 2(i), 2(xi), 2(xii) of the said assignment deed and other such deeds to claim that the rights in the entire films were assigned to the said defendant. The learned Senior counsel for the plaintiff relied upon judgment of the *High Court of Justice, Court of Appeal (Civil Division) of United Kingdom in the case of Pink Floyd Music Limited Vs. EMI Records Limited*¹, to contend that terms of an agreement ought to be interpreted on the basis of commercial commonsense and on the basis as to what a reasonable person would have understood the parties to the contract to have meant. Reliance was also placed on judgment of this Court in the case of *Zee Entertainment Enterprises Limited Vs. Ameya Vinod Khopkar*

¹ (2010) EWCA Civ 1429

*Entertainment and Ors.*² to contend that such assignment deeds were required to be read as a whole. For the said proposition, reliance was also placed on judgment of this Court in the case of *Rupali P. Shah Vs. Adani Wilmer Limited and Ors.*³

16. It was submitted that the interpretation that the defendant No.1 was placing on the expression “the said work” in the assignment deeds executed in its favour, was totally out of context and it was not even a possible interpretation of the said expression, on the assignment deeds being read as a whole. Thereafter, the learned Senior counsel appearing for the plaintiff referred to the assignment deeds executed in favour of the plaintiff by owners, producers and their assignees to contend that all rights were assigned to the plaintiff, including the negative rights in the said films. In the light of contentions raised on behalf of defendant No.1, with regard to absence of link documents pertaining to 9 out of 24 films, it was specifically submitted that all such link documents were available with the plaintiff, for perusal of this Court and further that reference was made to the same in the pleadings. It was further submitted that since the documents were voluminous, the plaintiff had not produced the same with the plaint.

17. It was further submitted that the emphasis placed on Order XI of the Code of Civil Procedure, 1908 (CPC) applicable to the Commercial Courts, was misplaced in the present case. The learned Senior counsel submitted that Order XI of CPC, as applicable to Commercial Courts, would also show that this Court was not completely denuded of its power to permit production of such link documents, if necessary, at the relevant stage. Thus,

² 2020 SCC Online Bom. 11301

³ Judgment and Order dated 8/5/2012 passed in Notice of Motion (L) No. 719/2012 in Suit (L) No.540/2012.

it was submitted that the said contention raised on behalf of the defendant No.1 was hyper-technical. In any case, it was submitted that Charter High Courts, like this Court, had power in equity while considering the question of grant of interim injunction and that the statutory provision of Order XI of the CPC, as applicable to Commercial Courts, could not, in any manner, limit such power of this Court. For the said proposition, learned Senior counsel appearing for the plaintiff relied upon judgment of this Court, in the case of *La Fin Financial Services Ltd. Vs. IL & FS Financial Services Pvt. Ltd.*⁴ Reliance was also placed on judgment of this Court, in the case of *Future Corporate Resources Pvt. Ltd. Vs. Edelweiss Special Opportunities Fund and Ors.*⁵

18. The learned Senior counsel further submitted that the defendant No.1 could not claim that temporary injunction ought to be denied on the ground of delay on the part of the plaintiff in approaching this Court, on the basis that when infringement of the copyright is clearly demonstrated by the plaintiff, injunction ought to follow. For this proposition, reliance was placed on the judgment of the Supreme Court, in the case of *Midas Hygiene Vs. Sudhir Bhatia and Others*⁶.

19. On the basis of aforesaid submissions, the learned Senior counsel appearing for the plaintiff claimed that this Court ought to grant temporary injunction as claimed by the plaintiff.

20. On the other hand, Mr. Ravi Kadam, learned Senior counsel appearing

⁴ (Judgment and order dated 11/9/2015 passed in Appeal No.274/2015).

⁵ (Judgment and order dated 13/10/2022 passed in Commercial IP Suit (L) No.31212/2022)

⁶ 2004 3 SCC 90

for the defendant No.1 submitted that insofar as 9 out of 24 suit films are concerned, i.e. the films at Serial Nos.3, 7, 8, 9, 11, 13, 14, 18 and 24 at Exhibit A to the plaint, no link documents were placed on record by the plaintiff and that therefore, insofar as the said 9 films are concerned, documents on record are deficient and this Court ought to reject, at the threshold, the prayer for temporary injunction as regards the said 9 films.

21. In order to support the said proposition, the learned Senior counsel for the defendant No.1 placed reliance on judgment of Madras High Court, in the case of *K. Bose Babu Vs. Gowri Productions and Ors.*⁷. By placing reliance on the said judgment, it was submitted that the plaintiff ought to demonstrate a strong *prima facie* case of its copyright by placing on record all relevant documents. On the explanation sought to be given by the plaintiff for failure to place on record the link documents pertaining to the said 9 films, the learned Senior counsel for the defendant No.1 submitted that merely because the documents were voluminous, it could not be a ground for their non-production. It was submitted that in the case of *Sudhir Kumar Vs. Vinay Kumar*⁸, the Supreme Court had rejected an identical argument.

22. On the aspect of the manner in which such discretionary interlocutory reliefs can be granted, reliance was placed on the judgment of the Supreme Court, in the case of *Wander Limited and Anr. Vs. Antox India Pvt. Ltd.*⁹, to contend that the major consideration is, as to whether the defendant has already been doing certain acts for a considerable period of time, as opposed

⁷ 2018 SCC Online Mad 13679

⁸ 2021 SCC Online SC 734

⁹ 1990 Supp(1) SCC 727

to such defendant yet to commence such acts. It was submitted that in the present case, even as per the document placed at Exhibit LL on behalf of the plaintiff, the defendant No.1 had been uploading audio-visuals of songs of the suit films from the year 2012 onwards, openly and continuously, thereby indicating that the discretion in the present case, ought not to be exercised in favour of the plaintiff.

23. In that light, learned Senior counsel appearing for the defendant No.1 also claimed that in the present case, the aspect of delay, laches and acquiescence assumed significance, which this Court ought to take into consideration.

24. Apart from this, the learned Senior counsel appearing for the defendant No.1 seriously contested the manner in which the plaintiff was reading assignment deeds executed between the original producer of the films and the defendant No.1. It was submitted that the agreements, even if read as a whole, with commercial commonsense, indicated that the defendant No.1 was certainly entitled to exploit the audio-visuals of songs contained in the said films, which it had been doing from the time when such documents were executed. It was specifically submitted that documents were placed on record, at least in respect of some of the suit films, showing that U-Matics were handed over to the defendant No.1, U-Matic being an analogue recording video cassette format pertaining to video tapes of the films, which did indicate that in terms of assignment deeds executed in favour of the defendant No.1, the said defendant could certainly exercise its rights insofar as audio-visuals of songs were concerned.

25. It was further submitted that in no case had the original producers

ever raised any objection when such audio-visual rights were being consistently exploited by the defendant No.1, since the time the films were produced. It was further submitted that the plaintiff was not entitled to foist its interpretation on the assignment deeds executed in favour of the defendant No.1, only to suit its interest. By referring to the clauses of such assignment deeds executed in favour of the defendant No.1, particularly sub clauses (i), (xi) and (xii) of Clause 2 thereof, it was submitted that the only interpretation that could be made was that the defendant No.1 certainly had rights in audio-visuals of songs contained in the suit films. On this basis, it was submitted that the present application deserved to be rejected.

26. Mr. Jamsandekar, learned counsel appearing for defendant No.2 adopted the contentions raised on behalf of defendant No.1. He further submitted that there was no urgency in the matter as the plaintiff had approached this Court belatedly. After referring to the relevant dates in the matter, particularly the Cease and Desist Notice issued by the plaintiff and the replies sent by defendant No.2, it was submitted that while such notice and replies were exchanged in the year 2017, the suit was eventually filed only in May, 2022. On this basis, it was submitted that in any case, no ground was made out for entertaining the application for interim injunction at this stage. On this basis, learned counsel for the defendant No.2 sought dismissal of the application.

27. Heard learned counsel for the rival parties in the light of the material brought to the notice of this Court. Considering the tenor of arguments raised on behalf of the plaintiff, it appears that while pressing the present application, the plaintiff seeks an order to restrain the defendant No.1, pending the suit, from telecasting or publishing audio-visuals of songs of the

suit films on the YouTube platform of defendant No.3 Google India Pvt. Ltd., without requisite permission/licence from the plaintiff. According to the plaintiff, in the absence of such permission/licence, the defendant No.1 was infringing upon the copyrights of the plaintiff in the suit films.

28. In order to press such interim relief, the plaintiff has relied upon the agreements/assignment deeds executed in its favour by various entities. It is claimed that the original producers/their assignees entered into assignment deeds, thereby assigning all exclusive copyrights in respect of the suit films in favour of the plaintiff. It is claimed that the negative rights of the suit films, including audio-visuals of songs, clippings, etc. have been assigned in favour of the plaintiff.

29. On the question of grant of such temporary injunction, it is obvious that the plaintiff ought to place on record all relevant documents on the basis of which, it claims to have made out a strong *prima facie* case. It is only when the plaintiff is able to demonstrate, on the basis of such documents, that it indeed can claim copyright in the suit films, that the prayer in respect of the suit films can be considered. To that extent, the defendant No.1 is justified in relying upon the judgment of the Madras High Court in the case of **K. Bose Babu Vs. Gowri Productions and Ors.** (*supra*).

30. The plaintiff could not seriously dispute that in the context of 9 suit films at Sr. Nos.3, 7, 8, 9, 11, 13, 14, 18 and 24 of Exhibit A to the plaint, the plaintiff has not filed link documents alongwith the plaint. The plaintiff has simply filed copies of documents that were executed in its favour by the alleged last assignee of the copyrights in the said 9 suit films. Defendant No.1 has raised a serious objection in respect of the same and it is contended

that in the absence of the link documents, there is nothing to show even *prima facie* that the plaintiff can claim copyright in the said 9 suit films. On behalf of the plaintiff, it is contended that the link documents are very much in possession of the plaintiff and the same can be produced before the Court. In the context of Order XI of CPC, as applicable to the Commercial Courts, the plaintiff contends that as per the said provision also, in case of urgency, the suit can be filed and documents can be filed subsequently. It is further claimed that under Rule 5 of Order XI of CPC, as applicable to the Commercial Courts, such documents can be placed on record with the leave of the Court. It is further contended that this Court being a Charter High Court, the powers of this Court are much wider in equity, while considering the question of interim injunction.

31. This Court is of the opinion that being the plaintiff claiming interim injunction, it is necessary for it to make out a strong *prima facie* case as regards its copyright in respect of all the 24 suit films. In order to make out a strong *prima facie* case with regard to such copyrights, the plaintiff is certainly expected to file all relevant documents with the plaint, which indicate the source of assertion of such rights on the part of the plaintiff. The opening words of Order XI Rule 1 of the CPC, as applicable to the Commercial Courts, state that the plaintiff shall file photocopies of all documents in its power, possession, control or custody, pertaining to the suit alongwith the plaint. In the present case, the plaintiff does not dispute the fact that it had in its power, possession, control and custody, the link documents pertaining to the aforementioned 9 suit films. Yet, the plaintiff chose not to file the link documents on record. The only ground for non-filing of the same is that the documents are voluminous. The Supreme Court, in the case of **Sudhir Kumar v/s. Vinay Kumar** (*supra*), rejected a

similar contention raised on behalf of the plaintiff. It was held that merely because the documents are voluminous, such an explanation cannot be accepted. Reliance placed on behalf of the plaintiff on Rules 4 and 5 of Order XI of the CPC, as applicable to the Commercial Courts, is also misplaced, for the reason that under Rule 4, the plaintiff is required to file additional documents within 30 days of filing of the suit and under Rule 5, such documents can be placed on record only with the leave of the Court and such leave can be granted only upon the plaintiff establishing reasonable cause for non-disclosure alongwith the plaint.

32. In the present case, admittedly, the plaintiff did not produce the link documents within 30 days of filing of the suit. Since the plaintiff has not applied under Order XI Rule 5 of the CPC, as applicable to the Commercial Courts, for placing on record such documents, this Court refrains from making any comment in that regard. In any case, it is a matter of fact that link documents pertaining to the aforesaid 9 suit films, are not on record. In the absence of link documents, the plaintiff is not justified in calling upon this Court to exercise its discretion for granting temporary injunction in its favour, on the basis that exclusive copyrights are held in the said 9 suit films. Thus, insofar as the said 9 suit films are concerned, this Court accepts the contention raised on behalf of defendant No.1 that the prayer for grant of temporary injunction cannot be considered at the threshold as no *prima facie* case is made out by the plaintiff to assert its copyrights in the said 9 suit films. This Court is also not inclined to accept the contention raised on behalf of the plaintiff that being a charter High Court, the absence of the link documents in respect of the said 9 suit films may be ignored. While exercising discretion, this Court cannot ignore the said deficiency. The judgments relied upon by the plaintiff in this regard cannot be much

assistance to it, particularly when the aspect of *prima facie* case is being examined by this Court.

33. Insofar as the remaining 15 suit films are concerned, much has been argued on the interpretation of the assignment deeds executed in favour of defendant No.1 by the original producers/owners of the films. The rival parties agree that such documents are to be read with commercial commonsense and that they have to be read as a whole. Hence, there can be no quarrel with the propositions laid down in the judgments of this Court, in the cases of **Zee Entertainment Enterprises Limited Vs. Ameya Vinod Khopkar Entertainment and Ors.** (*supra*) and **Rupali P. Shah Vs. Adani Wilmer Limited and Ors.** (*supra*) as also judgment of the High Court of Justice, Court of Appeal (Civil Division) of United Kingdom, in the case of **Pink Floyd Music Limited Vs. EMI Records Limited** (*supra*). Applying the said principles to the assignment deeds executed in favour of defendant No.1, it needs to be examined as to whether the plaintiff is justified in claiming that only audio rights of the suit films were assigned in favour of defendant No.1.

34. Defendant No.1 claims that a proper interpretation of the assignment deeds executed in its favour in respect of the suit films, shows that in most cases, there was one-time payment, resulting in absolute vesting of rights in respect of the said defendant and that in some cases, the films were funded by defendant No.1 and it is for this reason that such agreements were executed before the production of the films. As opposed to this, the plaintiff claims that the clauses of the assignment deeds, including clauses 2(i), 2(xi) and 2(xii) thereof, ought to be read in the context of the entire deeds, showing that only audio rights were assigned.

35. Since reference was made to assignment deed pertaining to the film “Amba”, it would be appropriate to refer to the same. It is significant that at the outset, the assignment deed records that cinematograph film “Amba” is referred in the said document as “the said work”. The definition clause and the clause pertaining to assignment assume significance, which read as follows:

“1. DEFINITIONS:

For the purposes of this deed, the following expressions shall have the meaning assigned to them as under:

- a) 'Work', 'Musical Work', 'Literary Work', 'Dramatic Work', 'Cinematographic film', 'Plate' shall have the meaning assigned to them by the provisions of the Copyright Act, 1957 as amended upto the date of this assignment.
- b) Record includes any disc, tape, perforated roll and all other devices (now or hereafter known) in which sounds are embodied for reproduction therefrom by any means whatsoever including electrical, mechanical or magnetic means other than a sound track associated with a cinematograph film.
- c) 'Recording' means the aggregate of the sounds embodied in and capable of being reproduced by means of a record.

2. ASSIGNMENT:

In consideration of the sum hereinafter agreed to be paid, the Producers as beneficial owners hereby assign to the company the following exclusive rights in the said work, namely:

- (i) all rights, titles and interests in the literary, dramatic and musical works embodied in the said work including all rights of publication, sound broadcasting, public performance and mechanical reproduction and recording of the said work;

- (ii) the right to make or authorise the making of any record embodying the said work, either alone or together with any other work;
- (iii) the right to produce and sell (under such trade marks or labels as the company may select from time to time) records of the said work;
- (iv) the right to make adaptations of the said work for the purpose of reproduction in the form of records, so as to be capable of being reproduced therefrom; (v) to perform the said work in public and any such adaptation by means of records;
- (vi) to broadcast the said work and any such adaptation by means of records;
- (vii) to cause the work and any such adaptation to be transmitted to subscriber to a diffusion service by means of records:
- (viii) to publish, sell, offer for sale, let, hire out, distribute or otherwise dispose of copies of the said work made on records:
- (ix) to authorise any other person to do any of the aforesaid acts;
- (x) the right to decide based on market demand whether and/ or when to discontinue or recommence the sale of records of the said work and to fix and alter the prices of such records and the irrevocable right and licence at all time to use and publish the name and photographs of artists, musicians, lyric writers, music directors and other persons associated with and/or engaged in the making of the said work in any manner whatsoever and the Producers' trademarks, banners and logos for labelling, cataloguing promoting and marketing the records of the said work;
- (xi) the right to make or authorise the making of any versions of the said work, and or of the musical,

literary and dramatic works embodied in the said work including the right to perform and or broadcast and/or transmit such versions;

(xii) the right to grant licences for publication, sound broadcasting, public performance and mechanical reproduction of the said work;”

36. Clauses 4, 7 and 12 are also relevant, which read as follows:

“4. DELIVERY:

At the time of signing this Deed or as soon as possible, before release of the said work for exhibition and immediately after completion of the said work, the Producers shall at their own expense deliver recorded tape(s) of the sound track, songs, instrumental track of the songs and/or any other material considered necessary for the purpose of this Assignment which in the opinion of the company should be technically suitable for use in the manufacture of records of the said work therefrom.

The Producers shall likewise deliver free of charge to the company, publicity material, photograph/s or other likeness/ess of the artiste/s performer/s and the author/s whose work/s may have been incorporated in the said work and/or original recording/s together with their respective biographical material and the company shall have the right to use the photograph/s or other likeness/ess or biographical material for advertising and publicity and for all record sleeves and for any other matter connected with the making, distributing, marketing and sale of records.

The Producers shall also deliver the company, immediately after signing the Assignment, logos, trademarks, stylised lettering/ designs etc. relating to the said work for, if required, incorporating them on the labels. covers sleeves, catalogues. etc, of, and for advertising the records.

7. ADAPTATIONS:

The Producers agree that in exercising their rights hereunder the company shall be entitled to add, to take from and alter the said work for the purpose of adaptation

for reproduction of the said work in the form of records and may combine the said work with any other work including a literary, dramatic, artistic and/or musical work.

12. ENTITLEMENT:

The producers agree that all the rights and obligations under this Assignment shall be construed to apply to all songs, dialogues and sequences to be included in the said work irrespective of the fact that the said songs, dialogues and/or sequences find a place in the final or any other version of the said work.

The Company shall not be bound to insert in and shall be at liberty to remove from and/or restore to its catalogue at any time in its absolute discretion the records of the said work. The Company shall be entitled to sell records of the said work at such price or prices as the Company shall think fit and shall also be entitled from time to time and at any time hereafter to alter/change the prices of such records or to cause or permit them to so altered.”

37. According to the plaintiff, reference to the expression “record” in the definition clause, and the overall reading of the assignment deed, shows that the assignment pertained only to audio rights of the film. Reference was also made to the definitions of relevant terms in the Copyrights Act, 1957, as it stood when the assignment deed was executed.

38. On the other hand, the defendant No.1 has relied upon clauses 2(i), 2(xi) and 2(xii) as also clauses 7 and 12 of the assignment deed to contend that not just audio rights, but rights in the entire cinematograph film were assigned to the said defendant. It is a matter of record that defendant No.1 claims to have restricted exploitation of such rights only to audio-visuals of songs contained in such films.

39. This Court is of the opinion that the reference, at the outset, in the said documents to the expression “the said work” being to the film in

question and specific reference to the expression “the said work” in clauses 2(i), 2(xi) and 2(xii) at this stage, does indicate that the plaintiff has indeed failed to make out a *prima facie* case in its favour about only audio rights of the film being assigned to defendant No.1. There is also *prima facie* substance in the contention raised on behalf of defendant No.1 that reference to the expression “sequence” in clause 12 also indicates that the restricted rights that the plaintiff claims to have been assigned to defendant No.1, may not be accepted at this stage.

40. It is significant that while defendant No.1 has indeed placed on record material to show that it has been exploiting the audio-visuals of the songs contained in the said films for a long period of time, none of the original producers/owners of the said suit films have raised any objection against defendant No.1. This gives credence to the contention raised on behalf of defendant No.1 that it has been exploiting audio-visuals of such songs of the suit films, openly and continuously on the basis of the understanding and interpretation of such assignment deeds between the original producers and defendant No.1. There is substance in the contention raised on behalf of defendant No.1 that the plaintiff cannot be permitted to interpret the terms of such assignment deeds in its own interest, particularly when the original producers/owners of the suit films have never raised any objection to the manner in which, the defendant No.1 has exploited the audio-visuals of the songs contained in the said suit films.

41. To that extent, the defendant No.1 is also justified in relying upon the definition of the expression “publication” contained in Section 3(b) of the Copyright Act, as it stood when the assignment deeds were executed in favour of defendant No.1, as also the definition of the expression

“performance” under Section 2(q) thereof. When the said contention is appreciated in the backdrop of the material placed on record, including U-matics i.e. Analog Video Cassettes of the films, being handed over to defendant No.1, it becomes further evident that the plaintiff has not been able to make a strong *prima facie* case for grant of interim injunction.

42. This Court is of the opinion that on the touchstone of *prima facie* case, as regards interpretation of the assignment deeds executed in favour of defendant No.1, the expression “the said work” referring to the film in question, cannot be ignored and it cannot be said, at this stage itself, that only audio rights in the suit films stood assigned to defendant No.1. In that light, the contention raised on behalf of the plaintiff as regards interpretation of the expressions, “sequence”, “version” and “version recording” cannot be of much assistance in pressing for grant of interim injunction.

43. Once such conclusions are reached, the emphasis placed on behalf of the plaintiff on the assignment deeds executed in its favour, cannot lead to a case being made out for grant of temporary injunction, simply for the reason that the assignors of the plaintiff could not have assigned a title better than what they were themselves holding. Howsoever much, the assignment deeds executed in favour of the plaintiff may state that all exclusive copyrights stood assigned in favour of the plaintiff, in the backdrop of the plaintiff having failed to make out a strong *prima facie* case as regards interpretation of the assignment deeds executed by the original producers in favour of defendant No.1, it cannot press for interim injunction only on the basis of the assignment deeds executed in its favour. It is in this backdrop that this Court is not going into the details of the interpretation of the various clauses contained in the assignment deeds executed in favour of the plaintiff.

44. Another aspect of the matter is delay on the part of the plaintiff in approaching this Court. The document at Exhibit LL placed alongwith the plaint, itself shows that defendant No.1 has been uploading the audio-visuals of the songs contained in the suit films from the year 2012 onwards, openly and continuously. The plaintiff, according to its own case, issued Cease and Desist Notice to defendant No.1 for the first time only in the year 2019 and thereafter, filed the present suit in May, 2022. In this context, the defendant No.1 is justified in relying upon judgment of the Supreme Court, in the case of **Wander Limited and Anr. Vs. Antox India Pvt. Ltd.** (*supra*). It is not as if the defendant No.1 was yet to commence exploitation of the audio-visuals of the songs contained in the suit films. In fact, even as per the documents placed on record by the plaintiff itself, the defendant No.1 had started uploading the audio-visuals of the songs of the suit films on YouTube openly and continuously from the year 2012. There is material placed on record by defendant No.1 to show that video cassettes of such song sequences were brought into the public domain by defendant No.1, much prior to 2012. Therefore, the consideration in such a case, for grant of interlocutory remedy, completely changes. In the facts of the present case, the plaintiff has failed to make out a case for interim injunction as sought.

45. In the context of delay in approaching the Court, the only contention raised on behalf of the plaintiff was based on the judgment of the Supreme Court in the case of **Midas Hygiene Vs. Sudhir Bhatia and Others** (*supra*), wherein it was held that when an infringement of a copyright is made out, normally injunction must follow. But as noted hereinabove, the plaintiff has failed to make out a *prima facie* case of infringement, based on interpretation of the assignment deeds executed in favour of defendant No.1.

Thus, the said judgment of the Supreme Court cannot come to the aid of the plaintiff.

46. As the plaintiff is found to have failed in making out a *prima facie* case in its favour, the aspects of grave and irreparable loss being suffered in the absence of temporary injunction and balance of convenience, pale into insignificance. In the light of the above, this Court finds that the plaintiff has not been able to make out a case for grant of temporary injunction as prayed. Accordingly, the application is dismissed.

(MANISH PITALE, J)

Mamta Kale/Priya Kambli