



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO.35625 OF 2023
IN
COM IPR SUIT (L) NO.35592 OF 2023

Phonographic Performance Ltd.

...Applicant /
Plaintiff

Versus

Kaamakazi Solution Pvt. Ltd. & Ors.

...Defendants

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

CORAM : R.I. CHAGLA J
DATE : 22ND DECEMBER, 2023

ORDER :

1. Mr. Jagtiani, the learned Senior Counsel for the Plaintiffs had tendered the Affidavit of Service dated 21st December, 2023 which shows the service on the Defendants by speed post on 21st December, 2023 and also by email dated 21st December, 2023. The Affidavit of Service is taken on record.

2. Mr. Jagtiani had moved this matter and had made out a case of urgency and accordingly the matter has been placed today.

3. It is necessary to refer to the Suit which had been filed by the Plaintiff herein against Deep Distilleries and Breweries Pvt. Ltd. And Ors. in Com IPR Suit (L) no.34604 of 2023 wherein the Interim Application (L) No.34685 of 2023 had been taken out. This Court had considered the statement made by Dr. Tulzapurkar, the learned Senior Counsel appearing for the Defendants therein that the Defendant No.1 therein was not hosting the subject new year 2024 event as had been displayed in the Insta handle of Defendant No.1 therein and that the event has been organized by Kamakazi Solution Private Ltd. This statement was accepted.

4. Accordingly, the Plaintiff herein has filed the present Suit and taken out the Interim Application against Kamakazi Solution Pvt. Ltd.

5. Mr. Jagtiani seeks urgent ad-interim relief at this stage in terms of prayer Clause (a) of the Interim Application in view of the Defendants hosting the aforementioned 2024 event at the Ramada Hotel which belongs to the Deep Distilleries and Breweries Pvt. Ltd. at which event Defendant No.1 will be communicating to the public the repertoire of sound recordings of the Plaintiff forming part of the Plaintiff's copyrighted works without obtaining a license from the

Plaintiff.

6. Mr. Jagtiani has referred to Exhibit C which is the CD containing the list of music labels, agreements and list of sound recording repertoire being the Plaintiff's copyrighted works. He has accordingly submitted that the Defendants though served have chosen not to make appearance.

7. Mr. Jagtiani has submitted that the Defendants cannot be heard to argue that the Plaintiffs sound recordings will not be communicated to the public since the Plaintiff owns and / or controls more than 70% of the sound recordings. Further, the advertisement published on the Instagram page of Ramada itself conveys such intention to play the sound recordings. Thus, there is serious apprehension that the Defendants will communicate and infringe sound recordings of the Plaintiff.

8. Mr. Jagtiani has further submitted that in the past the Defendant No.1 had obtained license for communicating the Plaintiffs sound recordings to the public and one such license is at Exhibit E to the Plaintiff.

9. Having considered the submissions, the Plaintiff claims

to own and / or control as exclusive licensee / assignee of the public performance rights of around 400 music labels with more than 45 lakh international and domestic sound recordings. The Plaintiff further claims to be exclusively entitled to grant license for communicating to the public the public performance repertoire under Section 30 of the Copyright Act, 1957. The details of the music labels, sound recordings and the agreements (“Plaintiff’s Copyrighted works”) have been annexed at Exhibit – C to the Plaint.

10. This Court is mindful of the fact that the larger issue as to the applicability of Section 30 of the Copyright Act, 1957 to the Plaintiff herein in the present Suit is being determined by this Court. However, considering that the aforementioned new years 2024 event is being hosted by the Defendant No.1 as borne out from the print out Instagram handle and further borne out from the statement has been made by Dr. Tulzapurkar appearing for the Defendants in Commercial IPR Suit (L) No.30604 of 2023 which was accepted by this Court vide order dated 20th December, 2023, the Plaintiff in my view has made out a prima facie case for grant of ad-interim relief in terms of prayer Clause (a) to the Interim Application.

11. I am of the prima facie view that if the ad-interim

relief in terms of prayer Clause (a) is not granted, the Defendant No.1 will communicate to the public the Plaintiff's sound recordings without obtaining a license from the Plaintiff and thus infringe the Plaintiff's copyrighted works. The Defendant No.1 has in the past obtained license from the Plaintiff as borne out from Exhibit - E to the Plaint. Further, this Court has from time to time granted ad-interim orders in favour of the Plaintiff in similar Suits filed by the Plaintiff wherein the same relief as in prayer Clause (a) has been sought against the Defendants therein who have not obtained license from the Plaintiff and were communicating the Plaintiff's sound recordings to the public.

12. In my view, in the absence of ad-interim relief, the Plaintiff will suffer grave irreparable loss. A prima facie case made out of the likelihood of infringement of the Plaintiff copyrighted works. This Court is of the prima faice view that the balance of convenience is in favour of the Plaintiff and the Defendants have chosen not to make an appearance despite service. Hence, the ad-interim relief is being granted.

13. In view of the above, there shall be ad-interim relief in terms of prayer Clause (a) to the Interim Application which

reads thus:-

(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.

14. The Advocates for the Plaintiff shall communicate this Order to the Defendants forthwith.

15. The Interim Application shall be placed for further consideration on 5th January, 2024.

[R.I. CHAGLA J.]