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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 44/2024, I.A. 1128/2024, I.A. 1129/2024, I.A.
1130/2024 & I.A. 1131/2024

SAGA MUSIC PRIVATE LIMITED Plaintiff

Through: Mr. Akhil Sibal, Sr. Adv. with Mr.
Nikhil Chawla, Mr. Shivank Pratap
Singh, Ms. Asavari Jain and Mr.
Adityaraj Patodia, Advs.

versus

ROGER DAVID & ORS. Defendants

Through:

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **16.01.2024**

I.A. 1129/2024 (seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
2. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.
3. Accordingly, the present application is disposed of.

I.A. 1130/2024 (exemption from filing clearer copies etc.)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the



documents on which the applicant may seek to place reliance within four weeks from today or before the next date of hearing, whichever is earlier.

3. Accordingly, the present application is disposed of.

I.A. 1131/2024 (exemption from instituting pre-litigation mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.*, FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.

2. Accordingly, the application stands disposed of.

CS(COMM) 44/2024

1. Let the plaint be registered as a suit.

2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statement(s) be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statement(s), the defendants shall also file affidavit(s) of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record. Liberty is given to the plaintiff to file a replication within 30 days of the receipt of the written statement(s). Along with the replication, if any, filed by the plaintiff, affidavit(s) of admission/denial of documents filed by the defendants, be filed by the plaintiff, without which the replication(s) shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

3. List before the Joint Registrar for marking of exhibits on 21st



March, 2024.

4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 1128/2024 (under Order XXXIX Rule 1 & 2 CPC)

1. This application has been filed under Order XXXIX Rule 1 and 2 CPC in respect of the suit filed by the plaintiff seeking *inter alia* declaration that the plaintiff has rights, title and interest in the literary works, musical works, sound recordings and cinematographic film created/produced by defendant No.1 with exclusively and/or collaboration with any party during the term of agreement dated 15th December, 2019 and addendum dated 05th January, 2021; and permanent injunction restraining the defendants and all other persons acting on his behalf and for him from infringing the copy right which accrues to the benefits of the plaintiff by virtue of the abovementioned agreements.

2. Plaintiff is a company incorporated in India that claims to be a music brand in *Punjabi* music and film industry and enjoys substantial goodwill and reputation in the market. Plaintiff is the owner of a music label by the name of “*Saga Music*”.

3. Defendant No.1 is a singer, song writer and music composer working under the screen name “*Bohemia*” in the Punjabi Music Industry, and a resident of United States of America.

4. Defendant Nos. 2 and 3 purport to be agents of defendant No.1.

5. Defendant Nos. 4-8 are other music producers/studios which the plaintiff alleges to be in violation of the abovementioned agreement and have produced certain sound recordings and albums with the defendant



No.1 and disseminated the same.

6. Mr. Akhil Sibal, Senior Counsel for the plaintiff adverts to the agreement dated 15th December, 2019 titled as “Exclusive Talent Engagement Agreement”. By virtue of this agreement, the defendant No.1 had agreed to work with the plaintiff for future projects on terms and conditions as stated in the said agreement. In particular, attention is drawn to clause 2.3, 2.5 and 3.1 in relation to the specific grievance in this suit. Essentially, these terms of the agreement provide that defendant No.1 would be exclusively engaged with the plaintiff for the term of 45 months and during the said term, he has to perform, sing and act for the plaintiff exclusively and not for any third party/parties throughout the world. Further, the agreement states that if any third party wishes to engage the defendant No.1, it would contact the defendant No.1 who would in turn contact the plaintiff and the deal would be routed through the plaintiff only.

7. Further, any performance in the world by defendant No.1 during this term would be managed by the plaintiff and the revenues would be mutually distributed between the parties as agreed. The defendant No.1 agreed that plaintiff would be the sole and exclusive owner for all Intellectual Property Rights including copy right in the songs and performances of defendant no.1 which would be performed by him during the term of the aforesaid agreement.

8. As per clause 3.1 of the agreement, the plaintiff was authorised by the defendant No.1 to make sound recordings and visual recordings in respect of their performances and assigned rights to the plaintiff for territory of the entire world regarding copy rights in the said



performances.

9. An Addendum was executed between the parties which altered certain deliverables as well as payment terms. However, the essential agreement relating to Intellectual Property Rights remained unchanged.

10. It is stated in the plaint that defendant No.1 failed to abide by the terms and conditions of the agreement and failed to make any performance or deliver any sound recording or visual recording to the plaintiff, despite an advance payment having been made to defendant No.1. There were various incidents of breach by defendant No.1 of the express terms of the agreement including not updating the plaintiff regarding his musical tours and releasing multiple audio songs on YouTube Channel.

11. Pursuant to discussions, the Addendum was, therefore, executed between the parties making the deliverables even more specific as regards defendant No.1. However, the breach of obligations continued, as per the plaintiff and defendant No.1 continued to release songs by collaborating with other labels, in particular defendant Nos. 4-8 without taking written approval from the plaintiff or routing the deal through the plaintiff. The plaintiff, therefore, lost the ability to monetise the performances despite categorical clauses in their favour in the agreement. To the surprise of the plaintiff, defendant No.1 served a legal notice dated 27th August, 2021 to the plaintiff claiming that the plaintiff had not performed his part of the agreement and was supposed to make payments to him which have not been paid. However this, the Senior Counsel for the plaintiff vehemently refutes, stating that there was no basis at all for lack of performance on the plaintiff's part, whereas, on the other hand, there was serious and continued breaches by the defendant No.1 from time to time. A



tabulation provided by the plaintiff regarding the said breaches (essentially various songs/ recordings that the defendant No.1 released with other third parties/labels, without informing plaintiff) is provided as under: -

S.No	PARTICULARS	LINK	Label/ Channel Name
1.	Defendant No.1's song "Virus" on his channel <u>Release Date: Mar 23, 2020</u>	https://www.youtube.com/watch?v=Sizwu58wkeI	Defendant No.1's own channel
2.	Defendant No.1's "AISH" song video on his own channel <u>Release Date: Apr 8, 2020</u>	https://www.youtube.com/watch?v=D1VemELye8o	Defendant No.1's own channel
3.	Defendant No.1's audio video and released song "Black Eyebrow" with Artist Lucky Love. <u>Release Date: Aug 3, 2020</u>	https://www.youtube.com/watch?v=D_ICBxjoOd4	V Series
4.	Defendant No.1's song "ROG" on his channel <u>Release Date: Aug 25, 2020</u>	https://www.youtube.com/watch?v=0DbH11cDvp0	Defendant No.1's own channel
5.	Defendant No.1's audio duet version	https://www.youtube.com/watch?v=V0Ovri4Ggl0	Geet MP3 (Defendant No. 7)



	titled "Piche Piche" with Gippy Grewal <u>Release Date: Sep 24, 2020</u>		
6.	Defendant No.1's audio video titled "Eddan Ni" with Amrit Maan <u>Release Date: Oct 28, 2020</u>	https://www.youtube.com/watch?v=mJ0uKG6kF5Y&list=RDmJ0uKG6kF5Y&start_radio=1	Bang Music (Defendant No. 8)
7.	Defendant No. 1's audio track titled as "These Days" with Artist Sidhu Moose Wala in his album Moosetape <u>Release Date: Jun 14, 2021</u>	https://www.youtube.com/watch?v=gnpw_Z-mBIY	Sidhu Moose Wala
8.	Defendant No. 1's online digital live event show titled "Sahara Live" on Youtube along with Artist Noveen Morris <u>Release Date: Aug 3, 2021</u>	https://www.youtube.com/watch?v=lu9sg3mel-g	Defendant No.1's own channel
9.	Defendant No. 1's audio version of "Star Boy" with Jass Manak in his album Bad Munda <u>Release Date: Aug 22, 2021</u>	https://www.youtube.com/watch?v=b77mZMP27Bs	Geet MP3 (Defendant No. 7)

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10.	Defendant No. 1's audio video song titled as "Ajnabi with Defendant No. 7 (Geet Mp3 Music Label) <u>Release Date: Nov 18, 2021</u>	https://www.youtube.com/watch?v=CWpUtO80UzU .	Geet Mp3 (Defendant No. 7)
11.	Defendant No. 7/Geet MP3 Music Label released a whole album of the Defendant No. 1 titled "I Am I.C.O.N" on its Youtube Channel. The album consists of 14 tracks/audio/audio-video songs, more specifically (1) Daddy's Home: Bohemia ft. J.Hind; (2) Jee Kare: Bohemia ft. Simar Kaur; (3) Main: Bohemia ft. Sikander Kahlon; (4) Tumhara Pyar: Bohemia (5). Drug Dealer: Bohemia ft. J.Hind & Official Bhagat; (6) I.M.I.T: Bohemia ft. Noveen Morris; (7). Gutt: Bohemia ft. Gurlez Akhtar (8) Dil: Bohemia ft. Deep Jandu; (9). Balle Balle: Bohemia ft. J.Hind;	https://www.youtube.com/watch?v=EjKvpgOFMgY .	Geet Mp3 (Defendant No. 7)



	(10). Tu Te Kehndi C: Bohemia ft. Divine; (11). Maar Dena: Bohemia (12). Desi Hip Hop: Bohemia; (13). Samandar: Bohemia ft. YDV; (14). Charso Bees 2: Bohemia <u>Release Date: On Apr 20, 2022</u>		
12.	Defendant No. 1 releasing the song "Nishana Title Track", under the music label of Om Jee Star Studios and Gem Tunes (Defendant Nos. 5 and 6) <u>Release Date: November 14, 2022</u>	https://www.youtube.com/watch?v=1CouplFkbrE	Om Jee Star Studios and Gem Tunes (Defendant Nos. 5 and 6)
13.	Defendant No. 1's audio video song with Sharn, titled as "Mi Amor (MegaMix) Ft. Sonam Bajwa", <u>Release Date: Apr 24, 2023</u>	https://www.youtube.com/watch?v=ydr4GD1NCA8	Desi Avenue Music Label
14.	Defendant No. 1's audio video song with Aman Yaar, titled as "Aglar" <u>Release Date: Aug 18, 2023</u>	https://www.youtube.com/watch?v=6-UZ6jEx3w0	Defendant No.1's own channel

	<u>Release Date: Aug 18, 2023</u>		
15.	Defendant No. 1's audio video song with Guru Randhawa, titled as "G-Class" <u>Release Date: Dec 12, 2023</u>	https://www.youtube.com/watch?v=FNVNP7vFT10	T-Series (Defendant No.4)
16.	Defendant No. 1's audio video song with Yasir Khan titled as 'Mukhtalif' <u>Release Date: Dec 23, 2023</u>	https://www.youtube.com/watch?v=11ovxGDcu-U&list=RD11ovxGDcu-U&start_radio=1	Gabrielx3 and Yasir Khan

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12. Therefore, the plaintiff submits that the defendant No.1 along with defendant Nos.4-8 have infringed the copy right of the plaintiff in breach of the agreement executed between the parties, and for which they have no option but to approach this Court by this suit, as attempts to address the issue with the defendant No.1/artist bore no fruit.

13. Mr. Akhil Sibal, Senior Counsel has further drawn attention to the legal issues which arise on enforcement of negative covenants, which the counsel claims is resident in clause 2.3 and 2.5 of the agreement. He places reliance on the decision of the Division Bench of this Court in ***Global Music Junction v. Shatrughan Kumar***, 2023 SCC OnLine Del 5479.

14. In ***Global Music (supra)*** after traversing the law in regard to negative covenants and specific performance, in facts and circumstances which were similar to this matter, the Division Bench of this Court deliberated upon the new avatar of the Specific Relief Act. It held that the Courts will now grant specific performance unless the claim for relief is barred under limited grounds prescribed in the statute. The relevant extract is produced as under: -

“39. This Court is of the view that by virtue of the changes brought about by the Amendment Act, 2018, the Courts will now grant specific performance unless the claim for relief is barred under limited grounds prescribed in the statute. This change is aimed at providing greater protection of contractual expectations by ensuring that a non-defaulting party can obtain the performance it bargained for. The Amendment Act, 2018 intends to discourage errant parties who may deem it more viable to breach a contract than perform it, as the cost of damages may still be less than the cost of the



performance.”

15. Further, it was held in the said decision that in the presence of a negative covenant, nothing precluded the Court from granting an injunction to enforce the negative covenant in a contract of personal service. The relevant paragraph is extracted as under: -

“56. Consequently, nothing precludes the Court from granting an injunction to enforce the negative covenant in a contract of personal service.”

16. The Senior Counsel further points out to the defamatory posts made by *inter alia* defendant No.2 previously made with regard to the plaintiff which were duly enjoined by an order of this Court in C.S. (COMM.) 784/2022 titled as **“Saga Music Pvt. Ltd. v. Dinesh Prasad Sharma & Ors.”** dated 07th December, 2022. Despite the same, it is pointed out that defendant No.1 with an implied reference to the plaintiff, has been posting defamatory content relating to his contract with the plaintiff on social media which has invited adverse comments specifically targeted at the plaintiff. It is contended that despite non-performance on his part of the agreement by the defendant No.1, the plaintiff has been subjected to disparagement and adverse comments which has caused him irreparable harm in the music industry.

17. In view of the above facts and circumstances, this Court finds that the plaintiff has made out a *prima facie* case for *ex-parte ad interim* relief as the balance of convenience lies in favour of the plaintiff and irreparable damage will be caused in case certain directions are not passed in favour of the plaintiff.



18. In this regard, Mr. Akhil Sibal, Senior Counsel, at this stage, confines his relief only in relation to the defendant No.1 engaging with other third parties in the meantime and with regard to not posting any defamatory or disparaging posts or content relating to the plaintiff. He further submits that advance notice was served on the defendant No.1 but he has chosen not to appear.

19. Accordingly, the defendant No.1 is restrained from engaging with third party/ entities for the purpose of making any sound recording/ cinematographic film/ musical work created by defendant No.1 and any performance by defendant No.1, without the prior written approval of the plaintiff.

20. Defendant Nos.1-3 are restrained from posting, uploading, sharing, e-sharing and/or publishing or causing any defamatory, disparaging, misleading posts against the plaintiff on any social media or digital platform.

21. Plaintiff shall comply with the provisions of Order XXXIX Rule 3 of the CPC within a period of one week.

22. Notices are issued to the defendants. Replies by the defendants be filed within three weeks with copies to the opposing side.

23. List before this Court on 23rd February, 2024.

24. *Dasti.*

25. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 16, 2024/MK/na/VP