

Saregama India Limited vs Emami Limited on 3 July, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 535/2024, CAV 285/2024, I.A. 32063/2024, I.A. 32064/2024, I.A. 32065/2024, I.A. 32066/2024, I.A. 32067/2024, I.A. 32068/2024

SAREGAMA INDIA LIMITED

Through:

Mr. Gopal Jain, Sr. Adv.
Ankur Sangal and Mr. Sh.
Rakshit, Advs.

versus

EMAMI LIMITED

Through:

Mr. Abhimanyu Bhandari,
Mehta, Ms. Roohe Hina D
Harshit Khanduja, Advs.
M: 9899923180
Email: roohinai6@gmail.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA
ORDER

% 03.07.2024 I.A. 32067/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.

2. Application is disposed of.

I.A. 32068/2024 (Permission to file Pen Drive)

3. This is an application seeking permission to file the video of the impugned advertisement in a pen drive.

4. Permission is granted. The plaintiff shall file the video in a pen drive within ten days.

5. Application is disposed of.

I.A. 32066/2024 (Enlargement of time for filing Court fees)

6. Learned counsel appearing for the plaintiff submits that they shall deposit the requisite fees within a period of three weeks from today.

7. Let the Court Fees be deposited within a period of three weeks from today.

8. The application is disposed of.

I.A. 32065/2024 (to file Addl. Documents)

9. This is an application seeking leave to file additional documents under the Commercial Courts Act, 2015.

10. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of Commercial Courts Act, and the DHC (Original Side) Rules, 2018.

11. The application is disposed of, with the aforesaid directions. I.A. 32064/2024 (Ex. from Pre-institution Mediation Proceedings)

12. 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 Versus R.A. Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529 and the judgment of the Supreme Court in Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382, exemption from attempting pre- institution mediation is allowed.

13. Accordingly, the application stands disposed of.

14. Since the learned counsel appearing for the defendant has put in appearance, the Caveat is discharged.

CS(COMM) 535/2024

15. Let the Plaint be registered as suit.

16. Summons of the suit are accepted by learned counsel appearing for the defendant. Let the written statement be filed by the defendant within thirty days. Along with the written statement, the defendant shall also file affidavit of admission/denial of the plaintiff's documents, without which, the written statement shall not be taken on record.

17. Liberty is given to the plaintiff to file replication within thirty days from the date of receipt of the written statement. Further, along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of documents of the defendant, be filed by the plaintiff, without which, the replication shall not be taken on record. If any of the parties wish to seek inspection of the documents, the same shall be sought, and given within the timelines.

18. List before the Joint Registrar (Judicial), for marking of exhibits, on 08th August, 2024.

19. List before the Court for framing of issues, thereafter. I.A. 32063/2024 (Interim Injunction)

20. The present application has been filed under Order XXXIX Rules 1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 ("CPC") for grant of interim injunction.

21. The plaintiff has filed the present suit to restrain the defendant from using the musical and literary works of the song "Udi Jab Jab Zulfein" for the advertisement of its product, i.e., Emami Kesh King Anti Hairfall Shampoo, without any license from the plaintiff.

22. Learned Senior Counsel appearing for the plaintiff submits that plaintiff is the assignee of all the works including musical, literary and sound recording rights in the impugned song "Udi Jab Jab Zulfein", from the film 'Naya Daur' for the entire copyright terms of sixteen years. It is submitted that the said rights have been assigned to the plaintiff by M/s BR Films, who was the original producer of the film 'Naya Daur', vide agreement dated 17th October, 1955.

23. Learned Senior Counsel appearing for the plaintiff submits that the terms of the aforesaid Agreement was initially for two years, which was renewed for one more year on 22nd July, 1957.

24. It is further submitted that the said producer also confirmed the rights in the sound recording as well as the literary and musical works assigned to the plaintiff vide letter of 31st May, 2007. It is further submitted that the said fact has also been confirmed by the Indian Performing Right Society Limited ("IPRS"), which is a registered society for musical and literary works, vide certificate dated 09th November, 2023.

25. Attention of this Court has been drawn to the aforesaid documents, filed along with the plaint, to submit that the plaintiff has the copyright over the song in question.

26. It is submitted that the defendant approached the plaintiff for grant of license for the lyrics and musical composition of the song in question on 26th October, 2023 and asked for copies of the documents showing the plaintiff's ownership over the said works. The plaintiff responded to the said E-mail on 31st October, 2023 asking the defendant for the details of the advertisement, so that the appropriate quote could be shared.

27. Learned Senior Counsel for the plaintiff submits that the defendant was also informed that its ownership documents were confidential and could not be shared with the defendant at that stage, as it was neither practical nor customary.

28. It is submitted that instead of replying to the E-mail, the defendant sent a letter on 08th November, 2023, to the same, wherein, it claimed to be seeking to locate the legitimate owner of the copyright in the lyrics and music composition of the song in question and challenge the rights of the plaintiff.

29. It is submitted that the plaintiff responded to the said letter on 10th November, 2023, wherein, the plaintiff reiterated its rights on the plaintiff's copyrighted works and also shared the certificate from the IPRS showing the plaintiff, as the owner of the plaintiff's copyrighted works. It is submitted that the defendant vide letter dated 24th November, 2023, disregarded the IPRS letter and also demanded that the plaintiff discloses its confidential documents.

30. Learned Senior Counsel appearing for the plaintiff has relied upon the Sections 22, 27, 51 and 55 of the Copyright Act, 1957, in order to claim the rights of the plaintiff.

31. It is further submitted that as per Clause 6 of the Agreement dated 17th October, 1955, between the plaintiff and the producer of the film 'Naya Daur', the plaintiff has been assigned rights in works, which includes literary, musical as well as sound recording. It is submitted that as per section 14(a) of the Copyright Act, 1957 as well as the Copyright owner, the plaintiff has an exclusive right to reproduce or to make any sound recording in respect of the plaintiff's works. Hence, the aforesaid act of the defendant amounts to infringement.

32. It is submitted that the plaintiff came to know about the advertisement in question in the month of June, 2024, and has immediately approached this Court by filing the present case.

33. Per contra, learned counsel appearing for the defendant on advance notice, submits that the Agreement dated 17th October, 1955 in favour of the plaintiff, assigned only sound recording rights in favour of the plaintiff, which has already expired.

34. Learned counsel appearing for the defendant has drawn the attention of this Court to Section 26 and 27 of the Copyright Act, 1957 to submit that any right, which the plaintiff had, was only for a period of sixty years, beginning from 15th August, 1957, when the movie in question was released. It is submitted that the said sound recording rights of the plaintiff have already expired after the expiration of sixty years from 15th August, 1957.

35. Learned counsel, thus, submits that the plaintiff has no right under the aforesaid Agreement dated 17th October, 1955, as of now.

36. He further submits that the letter dated 31st May, 2007, issued by the BR Films Pvt. Limited, is not an Assignment Agreement. Thus, he submits that the plaintiff cannot claim to be the owner of the song in question.

37. However, he submits that without prejudice to the rights and contentions of the defendant, the defendant is ready to deposit a sum of 10 Lacs with the Court to show its bona fide, as the defendant is always open to paying the license fees to the actual owner.

38. At this stage, learned Senior Counsel appearing for the plaintiff submits that the plaintiff charges approximately 40-50 Lacs per annum for such licenses. However, the aforesaid figure is disputed by learned counsel appearing for the defendant.

39. Issue notice. Notice is accepted by learned counsel appearing for the defendant.

40. Let reply be filed within a period of four weeks.

41. Rejoinder thereto, if any, within two weeks, thereafter.

42. The defendant is directed to deposit a sum 10 of Lacs with the Registry of this Court, within a period of two weeks.

43. In the meanwhile, the plaintiff is directed to submit documents, along with an affidavit, with respect to the amounts which are charged by the plaintiff with regards to the license of similar nature, as in the present case.

44. At the request of learned Senior Counsel appearing for the plaintiff, the documents, regarding grant of similar license to third parties, subject matter of the present suit, shall be filed by the plaintiff, in a sealed cover.

45. It is further directed that the amount of 10 Lacs that has been directed by this Court to be deposited by the defendant, is only an interim arrangement for the time being. In case, after hearing the parties, this Court is of the view that the amounts to be deposited by the defendant should be varied, the said aspect, shall be considered by this Court, on the next date of hearing.

46. List before the Joint Registrar (Judicial), on 08th August, 2024

47. List before the Court on 19th September, 2024.

MINI PUSHKARNA, J JULY 3, 2024/kr