IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

**INTERIM APPLICATION (L) NO. 39548 OF 2025**
**IN**
**COMMERCIAL IP SUIT (L) NO. 39498 OF 2025**

Novex Communications Private Limited ...Applicant/Plaintiff

***Versus***

The Phoenix Mills Limited and Others ...Defendants

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*Mr. Cyrus Ardeshir, Senior Advocate i/b Mr. Kunal Parekh, Ms. Riti Gada, Ms. Nikita Nangare i/b Dua Associates for Plaintiff.*

*Huzefa Nasikwal, Idris Balsinorwala for Defendants.*

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**Coram : Sharmila U. Deshmukh, J.**
**Date : 19th December, 2025.**

**P. C. :**

**1.** At the outset, Mr. Ardeshir, learned Senior Advocate appearing for Plaintiff tenders the draft amendment and seeks leave to amend the proceedings in terms of draft amendment. Learned counsel appearing for Defendants does not oppose the draft amendment. Leave granted to amend the proceedings in terms of draft amendment. Amendment to be carried out within period of three weeks from today. Re-verification is dispensed with.

**2.** The suit has been filed for infringement of copyright and as *quia*

*timet* action in view of apprehended violation by Defendants. It is submitted that Defendants in the past have exploited the copyright works, the ownership of which vests in the Plaintiff without obtaining non-exclusive public performance rights in the sound recordings from the Plaintiff.

**3.** Mr. Ardeshir would submit that the Plaintiff is the owner of the copyright in the sound recordings by way of assignment agreements/exclusive license agreements. He would submit that the Plaintiff's repertoire consists of large number of songs and the assignment agreements are appended to the Plaint. He submits that recently in October, 2025, the Plaintiff learnt that on 4th October, 2025, 5th October, 2025 and 6th October, 2025, events were held at Defendant's premises in which the Defendant Nos. 1, 2 and 5 have infringed the Plaintiff's copyright by playing the songs/sound recordings which are set out in Paragraph No. 22 of the Plaint. He submits that the representative of the Plaintiff has recorded the videos and converted the same into DVD which is appended to the Plaint. He would further point out the Affidavit of the Plaintiff's representative detailing the facts as regards the infringement. He would further submit that on 27th September, 2025, when the Plaintiff's representative visited the premises owned and operated by the Defendant Nos. 1, 2 and 5, he found communication of Plaintiff's

sound recording without obtaining the requisite authorization.

**4.** Mr. Nasikwala, learned counsel appearing for Defendants tenders the Affidavit-in-reply, which is taken on record. He submits that in paragraph Nos. 5 and 6 of the Affidavit-in-reply, the Defendants have stated that the Defendants ensure compliance with all applicable laws including IPR laws. He submits that insofar as the Defendants are concerned, Defendants have not and will not in future publicly communicate any sound recording/music in which the Plaintiff's claims to hold copyright. He, however, submits that where the events are held by third-party, who are independently responsible for obtaining the necessary permissions, the Defendants cannot be held liable even if the events are scheduled in Defendant's premises. He submits that it is only in event of Defendants communicating the sound recordings themselves that any infringement can be alleged. In support, he relies upon the decision of the Hon'ble Division Bench of this Court passed in ***Phonographic Performance Limited vs. Avion Hospitality Pvt. Ltd. and Others***[1]. He submits that in the said decision, the Hon'ble Division Bench while granting ad-interim injunction had granted the relief by bracketing the portions as regards the Defendant's premises therein.

**5.** In rejoinder, Mr. Ardeshir, would point out the provisions of Section 51(a)(ii) of Copyright Act, 1957 which states of copyright being

1 Commercial Appeal (L) No. 100 of 2017, decided on 22nd December, 2017.

infringed even if the premises are permitted to be used for profit for communication of the work to the public where such communication constitutes an infringement of the copyright.

**6.** I have considered the submissions and perused the record.

**7.** The Plaintiff is the owner of the copyright in the sound recordings *prima facie* evident from the assignments executed in favor of Plaintiffs and they are *prima facie* entitled to grant license under Section 30 of the Copyright Act, 1957. It is the specific pleading that in the month of September, 2025, the Defendants premises were used for broadcasting the sound recordings in which the Plaintiff holds the copyright without obtaining the necessary licenses. At this stage, *prima facie* there is nothing to doubt the Affidavit, filed by the representative of the Plaintiff as regards the video recording of the infringement and converting the same into DVD.

**8.** Insofar as the contention that the Defendants are not responsible where the infringement has taken place during the events which are scheduled by the third-party though on the premises of Defendant, the provisions of Section 51(a)(ii) of Copyright Act, 1957 provides that copyright in the work is deemed to be infringed even if the person permits its place to be used for communication of the work for profit where such communication constitutes infringement of the copyright. The said provision is sufficient answer to the submission

raised by Mr. Nasikwala seeking to distance itself from the unauthorized broadcasting by third-party. Insofar as the decision of ***Phonographic Performance Limited vs. Avion Hospitality Limited*** (supra) is concerned, before the Hon'ble Division Bench, the provisions of Section 51A (a) (ii) were not considered and there is no discussion on the said provisions. The ad-interim relief by bracketing the relevant portions, was granted in facts of that case and same cannot constitute binding precedent. *Prima facie* in view of Section 51(a) (ii) of Copyright Act, 1957 coupled with the fact that the action is in the nature of *quia timet* action, in view of apprehension based on the earlier events which had taken place in the Defendants premises, case has made out by Plaintiff.

**9.** In light of above, ad-interim relief is granted in terms of prayer clause (a), which reads as under:

> **"a)** that pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to issue a temporary order of injunction against restraining Defendants, its directors, their servants, employees, agents, assignees, licensees, representatives, 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 I hid purposes or otherwise infringing the copyright in any work owned and protected by the Plaintiff."

**10.** Stand over to **22nd January, 2026**. Ad-interim relief granted to continue till the next date.

**[Sharmila U. Deshmukh, J.]**