

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 16.10.2008
Date of decision: 03.11.2008

+ RFA (OS) No.57 of 2008

M/S. PHONOGRAPHIC PERFORMANCE LIMITED ...APPELLANT

Through: Mr. Sandeep Sethi, Sr. Advocate
with Mr. Pragyan Sharma,
Ms. Kanika Mehra & Mr. Mohit,
Advocates.

Versus

M/S. LIZARD LOUNGE & ORS. ...RESPONDENTS

Through: Mr. K.K. Sharma, Advocate
for Respondents 4 & 9.
Ms. Pratibha M. Singh &
Mr. Sudeep Chatterjee,
Advocates for Respondents 7, 12
& 14.
Ms. Bimla Sharma, Advocate for
Respondents 11 & 15.
Ms. Nidhi Lal, Advocate for
Respondent No.14.

+ RFA (OS) No.58 of 2008

M/S. PHONOGRAPHIC PERFORMANCE LIMITED ...APPELLANT

Through: Mr. Sandeep Sethi, Sr. Advocate
with Mr. Pragyan Sharma,
Ms. Kanika Mehra & Mr. Mohit,
Advocates.

Versus

HOTEL GOLD REGENCY & ORS. ...RESPONDENTS

Through: Mr. Neeraj Malhotra &
Mr. Sohit Chaudhary, Advocates
for Respondent No.1.
Mr. K.K. Sharma, Advocate
for Respondents 2 & 3.
Ms. Pratibha M. Singh &
Mr. Sudeep Chatterjee,
Advocates for Respondent No.7.
Ms. Bimla Sharma, Advocate for
Respondents 10.
Mr. Dhruv Anand, Advocate for
Respondent No.11.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

SANJAY KISHAN KAUL, J.

1. The rights of a Copyright Society to institute a suit in its own name for infringement of Copyright has given rise to these Appeals. In terms of the impugned judgements/orders, the applications filed by the respondents (defendants in the suit) under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code) have been allowed and the plaint has been rejected.
2. The appellant is a company duly incorporated and registered under the provisions of the Companies Act, 1956. It has been registered as a Copyright Society under Section 33 of the Copyright Act, 1957 (hereinafter referred to as the said Act) and a certificate to that effect has been issued by the Registrar of Copyrights. The various owners of Copyrights in different sound recordings of recorded music entered into agreements with the appellant enabling the appellant to administer their rights by issuance of licenses in respect thereof. The agreements give various rights to the appellant as a licensee. The respondents, on

the other hand are hotels, lounges, bars & restaurants who are alleged to be playing the sound recordings for which the owners of the Copyrights have entered into License Agreements with the appellant. The respondents have been playing the said music without any such license from the appellant and thus, a case of infringement of Copyright had been pleaded. The appeals arise from two suits filed by the appellant seeking injunctions against infringement of Copyright in the sound recordings as also for recovery of money for unauthorisedly playing the sound recordings and thus, communicating the same to the public in different premises of the respondents without any license.

3. It is the case of the respondents that such a suit cannot be maintained by the appellant and if at all any grievance arose the same could be agitated only by the owners of the Copyrights.
4. In order to appreciate the controversy, it is necessary to consider some of the relevant provisions of the said Act. Chapter VII was substituted by Act 38 of 1994. It consists of Section 33 to Section 36A. Section 33 of the said Act deals with registration of Copyright Society. Sub-section 3 of Section 33 of the said Act confers the power on the Central Government to register such association of persons as Copyright Society subject to the conditions as may be prescribed. The relevant provisions are as under:

“33. Registration of copyright society- (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights

conferred by this Act except under or in accordance with the registration granted under sub section (3):

Provided that an owner of copyright shall, in this individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society.

Provided further that a performing rights society functioning in accordance with the provisions of Section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons which fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub section (1) to the Registrar of Copyrights who shall submit the application to the Central Government.

(3) The Central Government may, having regard to the interest of the authors and other owner of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in applicants, register such association of persons as a copyright society to such conditions as may be prescribed.

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interest of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed.

(5) If the Central Government is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such order under sub section (4) and that Government shall appoint and administrator to discharge the functions of the copyright society.”

5. Section 34 of the said Act authorizes the administration of rights of an owner by such a registered Copyright Society.

Section 34 of the said Act reads as under:

“34. Administration of rights of owner by copyright society - (1) Subject to such conditions as may be prescribed,-

(a), a copyright society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both, and

(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the copyright society under any contract.

(2) It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation.

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

(3) Subject to such conditions as may be prescribed, a copyright society may -

(i) Issue licences under Section 30 in respect of any rights under this Act,

(ii) Collect fees in pursuance of such licences,

(iii) Distribute such fees among owners of rights after making deductions for its own expenses,

(iv) Perform any other functions consistent with the provisions of Section 35.”

6. It is, thus, apparent from a reading of the aforesaid provisions that the Copyright Society can accept from the

owners of the Copyrights the authorization to administer such rights and issue licenses and collect fee in pursuance to such licenses. Thus, such Copyright Societies step into the shoes of the Copyright owners and that is why a reference has been made to the provisions of Section 30 of the said Act, which reads as under:

“30. Licences by owners of copyright- The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent.

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.”

7. The rights of a Copyright Society are not unfettered and thus, Section 35 of the said Act provides for control over the Copyright Society by the owners of the rights. Section 35 of the said Act reads as under:

“35. Control over the copyright society by the owner of rights – (1) Every copyright society shall be subject to the collective control of the owners of rights under this Act whose rights it administers (not being owners of rights under this Act administered by a foreign society or organisation referred to in sub section (2) of Section 34 and shall, in such manner as may be prescribed,-

(a) Obtain the approval of such owners of rights for its procedure of collection and distribution of fees.

(b) Obtain their approval for the utilisation of any amounts collected as fees for any purposes other than distribution to the owner of rights, and

(c) Provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.”

8. It may be noted at this stage that the case of the respondents is that in terms of the aforesaid provisions, the Copyright Society has a non-exclusive right. Such plea is based on the first proviso to Section 33, Section 34 (1)(b) & Section 35 (1) of the said Act.
9. The respondents seek to rely upon the provisions contained in Chapter XII of the said Act dealing with the civil remedies and the provisions relied upon are as under:

“54. Definition – For the purposes of this Chapter, unless the context otherwise requires, the expression, "owner of copyright" shall include-

(a) An exclusive licensee :

(b) In the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclose publicly by the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author or his legal representatives.

55. Civil remedies for infringement of copyright

- (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the Plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was

made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is provided, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceeding in respect of the infringement of copyright shall be in the discretion of the court.”

....

“61. Owner of copyright to be party to the proceeding – (1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.”

10. It is, thus, the plea of the respondents that the expression “owner of Copyright” includes an exclusive licensee as distinct from a non-exclusive licensee as in the case of a Copyright Society. Thus, when Section 55 confers the right on the owner of the Copyright to seek relief by way of injunction, damages, accounts and otherwise against infringement, only an exclusive licensee would be entitled to step into the shoes of the owner of Copyright. This aspect is further explained by reference to Section 61 of the said Act that even an exclusive licensee while instituting a suit is required to make the owner of the Copyright a defendant unless the court otherwise directs and the owner would have the right to dispute the claim of the exclusive licensee.

11. In the impugned order the learned single Judge has framed two fundamental questions regarding the maintainability of the suit as under:

“1. Whether, in view of the provisions of sections 33 and 34 of the Copyright Act, 1957, a suit for infringement of copyright would be maintainable at the instance of a registered copyright society in the absence of the owner of the copyright?

2. Whether, in view of the provisions of section 61 of the Copyright Act, 1957, inasmuch as the owner of the copyright has not been made a party to the present suit, the same would be liable to be rejected on the ground of non-impleadment of a necessary party?”

12. The learned single Judge in respect of the second question raised has found in favour of the appellant by coming to the conclusion that the provisions of Section 61 (1) of the said Act apply to an exclusive licensee and not to a Copyright Society registered under Section 33 of the said Act. The appellant being a Copyright Society was held not to be an exclusive licensee. However, insofar as the maintenance of a suit for infringement of Copyright was concerned, the finding is against the appellant.

13. The learned single Judge has discussed the aforesaid provisions referred to come to the conclusion that these provisions indicate that the business of issuing or granting licenses in respect of any work in which Copyright subsists can only be conducted by a registered Copyright Society under Section 33 (3) of the said Act while the owner of the Copyright shall continue to have the right to grant licenses in respect of his works consistent with his obligations as a member of a registered Copyright Society. Thus, a Copyright Society has been held not to have exclusive

license to grant licenses. It is also the view of the learned single Judge that the object of setting up of the Copyright Society was to confer the right to collect license fee, distribute the same amongst the owners after deduction of expenses of the Copyright Society but the right to institute an infringement action is conspicuous by its absence. In fact, Section 35 of the said Act requires a Copyright Society to be under the collective control of the owners of the right and would have to obtain approvals from them for certain acts. The rights of the Copyright Society have been, thus, held to be circumscribed by provisions of Section 34 of the said Act. The provisions of Section 55 of the said Act have been held to confer the right for seeking a remedy against infringement only by the owner of Copyright, the expression "owner of Copyright" having been defined in Section 54 to include an exclusive licensee. The Copyright Society not being an exclusive licensee has been held not to have a right to institute legal proceedings.

14. The learned single Judge has referred to one of the model agreements executed with the owner of Copyright and the clause relied upon by the appellant being Clause 2, which is, once again, reproduced hereinunder:

"2. Enforcements

Ancillary to the rights granted in Clause 1 to the Collection Company and/or its agents, in case any instance of any infringement of the Communication to the Public right of any of the Recordings hereunder is brought to the notice of the Collection Company, the Owner hereby authorizes the Collection Company and/or its duly authorized agents to do the following:-

- (a) swear affidavits, institute, commence or conduct civil, criminal and/or administrative proceedings, file complaints, notices, or give evidence in any court, tribunal or relevant authority, and appoint solicitors to act for the purpose of commencing or conducting proceedings on the Owner's behalf in respect of such infringing/unauthorized Communication to the Public, arising out of this Agreement;
- (b) compromise, refer to arbitration or otherwise settle any suit or legal or administrative proceedings commenced under this Agreement, consulting where reasonably necessary with the copyright owner or exclusive licensee as appropriate;
- (c) receive property, damages or costs awarded by a court, tribunal or other relevant authority, or as agreed by settlement, in respect of proceedings commenced under this Agreement, to the Collection Company's account for the purpose of contributing towards the costs of undertaking such further proceedings; and\
- (d) give undertakings to any court, tribunal or relevant authority as to damages and costs and in case damages and/or costs are awarded by a court, tribunal or judicial authority against the Collection Company in respect of proceedings, which have been initiated pursuant to this Agreement, the Owner hereby agrees to pay to the Collection Company the Owner's share thereof."

15. The learned single Judge has, however, come to the conclusion that whatever agreement between the owner of the Copyright and the Copyright Society and the provisions made thereunder may provide, only what is permissible under the said Act would be enforceable. Since it has been held that the Act does not permit grant of any authorization by an owner of Copyright to the Copyright Society to sue for infringement of Copyright and seek injunctions, damages, accounts or other civil remedies, the suit has been held not to be maintainable. Such a right is stated to be in the

exclusive domain of the owner of the Copyright or an exclusive licensee while a Copyright Society is neither.

16. We heard learned counsels for the parties at length and have examined the submissions advanced before us as also the impugned judgements of the learned single Judge.
17. We must first note a subsequent development which has occurred by reason of a pronouncement by the Apex Court in M/s. Entertainment Network (India) Ltd. Vs. M/s. Super Cassette Industries Ltd. 2008 (9) SCALE 69. This judgement was pronounced by the Supreme Court on 16.5.2008, which is stated to be the last working day. The impugned judgements were reserved on 19.3.2008 and the judgements were pronounced on 2.7.2008 immediately on the reopening after the summer recess. The interregnum period of time was, thus, small and both the learned counsels for the parties did not bring this judgement to the notice of the learned single Judge. The judgement is of some significance as it deals with the matter in issue.
18. The Supreme Court was seized with the interpretation of Section 31 of the said Act. A Copyright Society registered with the Government of India was administering the broadcasting rights of the music recordings of its member companies. The Supreme Court carried out a broad analysis of the provisions including the provisions relating to a Copyright Society. It is necessary to refer to the same in extenso for it succinctly sets out the rights and obligations of such a Copyright Society.

“73. Chapter VI deals with licence. The statutory licences are required to be granted having regard to the various factors stated therein.

74. Section 33 is a special provision which provides for registration of a copyright society.

75. It may, however, be necessary to consider that unlike other countries the broadcasting rights by themselves were introduced in India for the first time by inserting Section 37 in the year 1994. It is true that the rights of free-to-air broadcasters have not been dealt with in a specific legislation unlike some other jurisdiction. It may, however, be of some importance to note that Chapter VII deals with Copyright society, the concept whereof was incorporated in the Act so as to enable an author to commercially exploit his intellectual property by a widespread dispersal in a regulated manner. It for all intent and purport steps into the shoes of the author. The society grants license on behalf of the author, it files litigation on his behalf, both for the purpose of enforcement as also protection of the enforcement of his right. It not only pays royalty to the author but is entitled to distribute the amount collected by it amongst its members. Section 34 providing for administration of rights of owners by a copyright society for all intent and purport creates a virtual agency so as to enable the society to act on behalf of the owner. The civil remedies for infringement of copyright as envisaged under Section 55 of the Act can also be enforced by the society. The Scheme of the statute governing the field in other countries is vast and wide. The jurisdiction of the Tribunal is indisputably very wide. No such legislative changes have been made in India presumably because until recent times, the Copyright in musical work was owned by a cooperative society, namely, IPRS and PPL.

76. The third party granting license on a prescribed fee of a musical work was contemplated under the Act. As a general rule for administering such copyrights, there are about 300 radio stations now. Monopoly in respect of sound recording is, as it appears from the tariff supplied to us by the respondent embrace within its field, Pop/Music Quizzes, Mobile DJ, Jukeboxes, Dance Teachers, Dance Centre/Studio, Exercise, Amateur Operatic & Dramatic Societies, Theatrical Productions, Temporary Camps/Shacks, Banquet Halls, Background Music- Guest Houses & Lodges, Hotels, Background Music- Public Houses & Cafes & Non AC Restaurants, Bankground Music – AC Restaurants, BARS, Background Music - Shops & Stores Premises, Background Music - Hairdressing Salons & Beauty

Parlours, Background Music - Clinics, Background Music - Nursing Homes & Hospitals, Background Music - Factories & Offices/Banks, Background Music - Waiting Rooms/Reception Areas, Background Music-Telephone Music on hold,Puppet/Magic Shows, Background Music-Theatres, Background Music - Cinemas, Background Music- Museums & Art Galleries, Background Music- Ten Pin Bowling Centres/Bowling Alleys, Background Music-Amusement & Pleasure Parks, Background Music - Amusement Arcades, Background Music - Casinos, Background Music - Gymnasiums, Background Music – Swimming Pools.

77. The right of the author of a copyright vis-`-vis the Society, thus, may be exercised in almost all walks of life from the `Radio Stations' to a small `Hairdressing Salon'.

78. If the right of an author/society is so pervasive, is it necessary to construe the provisions under Section 31 of the Act having regard to the International Covenants and the laws operating in the other countries? The answer to the said question must be rendered in affirmative. Interpretation of a statute cannot remain static. Different canons and principles are to be applied having regard to the purport and object of the Act. What is essential therefor is to see that the expanding area in which the copyright will have a role to play is covered. While India is a signatory to the International Covenants, the law should have been amended in terms thereof. Only because laws have not been amended, the same would not by itself mean that the purport and object of the Act would be allowed to be defeated. If the ground realities changed, the interpretation should also change. Ground realities would not only depend upon the new situations and changes in the societal conditions vis-`-vis the use of sound recording extensively by a large public, but also keeping in view of the fact that the Government with its eyes wide open have become a signatory to International Conventions.”

19. The aforesaid observations have also to be appreciated in the context of the Statement of Objects and Reasons dated 6.5.1992 for amending the said Act where it is clearly stated that one such object is “to deal more effectively with the infringement of Copyright and related rights”. The notes on various clauses *inter alia* state as under:

“Clause 11. – This clause seeks to substitute new provisions for Chapter VII to make provision for copyright societies in respect of any kind of right (and not merely “performer’s rights”) and to make adequate general provision for the registration and management of such societies in the interests both of authors and of other copyright owners for whom it would be impracticable or uneconomical to license the use of their work individually to all users, or to collect fees from them, and also in the interests of the general public and particularly of users of rights who may not conveniently be able to obtain licenses from individual authors or copyright holders; and thus to improve the enforcement of copyright with benefits both to the holders of rights and to the general public.”

20. The Statement of Objects and Reasons, thus, show that the new provisions of Chapter VII providing for such Copyright Societies were incorporated with various objectives and one such objective was to improve the enforcement of Copyright with benefits both to the holders of the right and to the general public.
21. The Supreme Court in M/s. Entertainment Network (India) Ltd. case (supra) has unequivocally observed that for all intents and purports the Copyright Society steps into the shoes of the author. Not only that it is further observed: “the Society grants licenses on behalf of the author, it files litigation on his behalf, both for the purpose of enforcement as also protection of enforcement of his rights”. Section 34 of the said Act was held to create a virtual agency for all intents and purports so as to enable the Society to act on behalf of the owner. The Supreme Court concluded that the civil remedy for infringement of Copyright as envisaged under Section 55 of the said Act can also be enforced by the Society.

22. In our considered view, the matter remains no more *res integra* in view of the categorical observations made by the Apex Court aforesaid and it cannot be said that the Copyright Society is not entitled to maintain a civil action for infringement.
23. Learned counsels for the respondents did seek to contend that these observations were made in the context of the interpretation of Section 31 of the said Act. We find little force in this plea for the reason that the Supreme Court has dealt with the very objective of amendment of Chapter VII as also the rights conferred on a Copyright Society. We are unable to accept the plea of the learned counsels for the respondents that the absence of any discussion about a Copyright Society not having exclusive rights would make the observations of the Supreme Court not binding or obiter in nature.
24. We can also look at the matter in issue from another perspective. The Copyright Society may not have exclusive rights inasmuch as the owner continues to simultaneously have rights to deal with his Copyright in the work. However, the Statement of Objects and Reasons and the provisions if read in that context clearly show that both the mechanism for administration of the Copyrights as also enforcement thereof was the intent of the legislature while incorporating/amending the provisions. It is not as if the enforcement mechanism was to be kept aside and only the administration and license fee aspects were to be incorporated. We are also unable to agree with the

conclusion of the learned single Judge that unless the Act gives such an authorization, the Society would have no right.

25. It is true that the Act provides for certain things to be done in a certain manner by the Copyright Society and no doubt it would have to be done in that manner; however, we cannot ignore the clauses contained in the agreement between the Copyright Society and the owner where specific powers have been conferred to institute all kinds of legal proceedings. The relevant Clause 2 has already been extracted above. If we were to accept the reasoning of the learned single Judge, it would imply that the principles of agency as contained under the Indian Contract Act, 1872 have to be given a go-bye. The Copyright Society is an agent appointed under the agreement by the owner of the Copyright and specific powers have been conferred on the agent to institute legal proceedings. The said Act does not contain any provision prohibiting the institution of legal proceedings in derogation to the general law of agency. The author being the first owner of Copyright under Section 17 of the said Act can certainly appoint an agent to institute legal proceedings.
26. Learned counsel for the appellant has also drawn our attention to the Commentary of Copinger and Skone James on Copyright (Fifteenth Edition) where following observations have been made under the heading “Rationale for Collecting Societies”:

“1. INTRODUCTION

A. RATIONAL FOR COLLECTING SOCIETIES

....

Licenses are granted in return for royalties or fees and the collecting societies collect and distribute the resulting remuneration among the copyright owners. Such organizations either acquire copyrights from their members by assignment or act as agents or licensees on behalf of their members to enforce copyright. Collecting societies are also empowered to monitor the uses made of the works to ensure that unauthorized uses of the works controlled by them do not take place. Where necessary, they enforce the rights of their members by legal action for infringement. For example, in the field of music, no individual composer, producer of a sound recording or other copyright owner has the resources, in practice, to secure adequate protection for his work or deal with the very large number of broadcasters and the many thousands of different public performance users in thousands of different places wishing to exploit such works.”

27. We have no doubt in our mind that the very object of providing for such a Copyright Society was not only to administer the license regime and recovery of fee in a better manner but also to prosecute claims for infringement. To hold otherwise would be a half job done. Individual owners of Copyright find it difficult to enter into multiple license agreements and recover fee or enforce their rights. The creation of a Copyright Society is to serve all the three objectives without denuding the author of its own individual rights. The present cases are not one where the owner is contradicting the rights of the Copyright Society. In any case they are all aspects/matters of trial and the plaint could not have been thrown out at the threshold on the aforesaid ground.
28. We are, however, not required to delve into any further detail as the authoritative pronouncement of the Apex

Court in M/s. Entertainment Network (India) Ltd. case (supra) sets that controversy to rest.

29. The appeals are accordingly allowed, impugned judgements set aside with the direction to restore the suits to their original numbers to be proceeded with in accordance with law.
30. The parties are left to bear their own costs.
31. Parties to appear before the learned single Judge for further proceedings on 24.11.2008.

SANJAY KISHAN KAUL, J.

NOVEMBER 03 2008
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MOOL CHAND GARG, J.