

CS(OS) 1928/2003 & IA Nos. 10629/2003 & 2575/2005

THE INDIAN PERFORMING RIGHT SOCIETY LTD. Plaintiff

Through : Sh. Jagdish Sagar with Ms. Geetanjali Visvanathan,
Advocates

Versus

SPIRE MEDIA PRIVATE LTD. & ANR. Defendants

Through : None

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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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. |

MR. JUSTICE S.RAVINDRA BHAT, J (Open Court)

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1. This is a suit for permanent injunction seeking to restrain the defendants from infringing the copyright of the plaintiff by causing the public performance of or communicating to the public. The plaintiffs; musical works or the under lying literary and/or musical works, or those of its sister societies on whose behalf the plaintiff is authorised to collect royalties.

2. As per the suit averments, the plaintiff society is a company limited by guarantee and registered under the Companies Act, 1956 and as a Copyright Society under section 33 of the Copyright Act, 1957. Further, it is a non-profit making body, established on August, 1969 to monitor, protect and enforce the rights, interest and privileges of its members and those of its sister societies comprising of Authors, Composers and Publishers of literary and/or musical works who are owners of copyright in their literary and/or musical works. Thus, it is exclusively authorized to licence the Public Performing Rights that exist in respect of the literary and musical works created by its members.

3. The plaintiff alleges that the first defendant, who is the Director of the second defendant, is the organizer of the show "Sunidhi Chauhan- Live", in which the third defendant is the performer/singer, along with her troupe. It is alleged that the literary/musical works, which are intended to be performed in the said event belong to the repertoire of the plaintiff, and the necessary permissions and licence were not been obtained (from the plaintiff), therefore, rendering such public performance unauthorized. Further, on gaining knowledge of the

defendants' intention to organize the said event on 08.11.2003, the plaintiff addressed a letter dated 04.11.2003 to the first and third defendants, apprising them of its rights in the musical/literary work forming the content of the event. It is alleged that the plaintiff's representatives also talked to the first defendant telephonically and requested all the defendants to fill in an application form for the intended live performance and furnish the applicable tariff for the same, by 05.11.2003. The defendants, allegedly, declined the plaintiff's request and showcased their intention to proceed with the show. The plaintiff asserts that the continued actions of the defendants, despite being put on notice and the prevailing law clearly amounts to wilful infringement of the copyrights vested in the plaintiff.

4. The plaintiff states that in the past too, it has brought action against the parties violating its copyright and that this Court has upheld its copyright in such works by way of either a decree or an *ex-parte ad interim* injunction. Paras 19 to 24 of the plaint describes such past instances.

5. On 06.11.2003 an *ad interim ex-parte* injunction was made in favour of the plaintiff and against the first and second defendants and by order dated 17.01.2006 they were proceeded *ex-parte*. The plaintiff was further directed to file its *ex-parte* evidence by way of affidavits.

6. In the evidence by way of affidavit, the plaintiff states a list its members, comprising of authors, composers and publishers of the Indian literary and musical works is provided in Ex.-P 3. Its members have executed Deeds of Assignment in its favour, thereby assigning their Public Performing Right in respect of their literary and/or musical works including such literary and musical works which they may produce, in future, to the plaintiff society; Assignment deeds executed by some of the members are provided as Ex.- P 3(1) to 3(31). In the plaintiff's Annual General Meeting, members meet to fix tariffs of the plaintiff. A certified copy of the plaintiff's current tariff is provided in Ex.-P 35. The plaintiff has also filed the original advertisement for the said event, issued by the defendants, which is marked as Ex.-P 36. A copy of the letter dated 04.11.2003, addressed to the defendants whereby they were requested to fill in the Live Performance Application Form and pay the requisite tariff is also annexed as Mark A. It also issued a letter dated 04.11.2003 to the premises where the said event was to take place, which is annexed as Mark B. The plaintiff re-affirms that despite repeated attempts the defendants refused to pay the due fee for the said event for exploiting the plaintiff's works for commercial gains. As far as the claim against the third defendant is concerned, the plaintiff states that the songs usually sung and performed by her are composed and written by musical composers and authors who are members of the plaintiff and have assigned the public performance rights to it. The plaintiff asserts that this information is available on www.bollyvista.com, printouts of which are filed along with Mr. Gurjot Singh's affidavit as Ex.- P 37.

7. As noticed in the interim injunction order, that the main grievance of the plaintiff was that the first and second defendants intended and advertised about organising a live event in Delhi, namely "Sunidhi Chauhan- Live" on 08.11.2003 without paying the requisite fee. They were suitably enjoined from doing so. The plaintiff has established that it is the assignee of the public performance rights by its members, who are the composers and/or lyricists of these literary and/or musical works. The plaintiff is authorised to collect the licence fees from the

persons interested in communicating the plaintiff's members' works to public and also to collect the royalties on their behalf. From the advertisement issued by the defendants for the purposes of the said proposed event, it is clear that the defendants did intend to organise the said event.

8. During the course of submissions at the interim order stage the ld. Senior counsel for the plaintiff submitted that the applicable licence fee for the said event will be Rs.1,00,000/-, in case the said event is not being telecasted. The first and second defendants, in the interim order, were asked to deposit a sum of Rs.75,000/- with the plaintiff in case they wish to go ahead with the organising of said event, which the defendants, apparently, did not. None of the defendants participated in the proceedings in the matter. The show, which was supposed to take place on 08.11.2003, has not been organised till date, although the plaintiff submits that the defendants have postponed the event. The interim injunction granted on 06.11.2003, is hereby confirmed and made permanent. As the alleged show was never organised, a case for damages is not made out.

9. The suit is hereby decreed in terms of para 30 (i) of the plaint. The first and the second defendants are directed to bear the costs of the proceedings and the counsel's fee, which is quantified at Rs.25,000/-.

October 28, 2009

(S.RAVINDRA BHAT)
JUDGE