

THE HIGH COURT OF DELHI AT NEW DELHI

C.S. (OS) No.2422 of 2007

% Order decided on : 08.11.2011

Indian Performing Right Society Ltd. Plaintiff
Through: Ms. Tanvi Mishra, Adv.

Versus

Mr. R. Krishnamurthy & Anr. Defendants
Through: None

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The plaintiff before this court is a company which is registered under the Companies Act, 1956. The plaintiff is also registered as a Copyright Society under Section 33 of the Copyright Act, 1957 (hereinafter referred to as the Act). It is alleged by the plaintiff that the defendants have committed flagrant violation of the rights of the plaintiff in the works assigned to him by numerous members. The plaintiff by way of the present suit has sought the following reliefs:

- (a) An order for permanent injunction restraining the defendants, its agents, employees and all others acting on its behalf from playing of music by live or any other means, or by way of mechanical devices at the hotel

operated by the defendants and/or channeling musical and or literally works of the plaintiff or those of its sister copyright societies, by way of mechanical devices such as Radio, Cable TV and/or RA. systems within the defendants' premises without obtaining a license from the plaintiff Society and without paying the requisite royalties, thereby amounting to infringement of the plaintiff Society's performing Rights in the same.

(b) An order for damages to the tune of Rs.20,05,000/- and a decree for the same be passed in favour of the plaintiff's Society and against the defendant.

(c) An order for costs of the proceedings.

2. The defendants are ex-parte, the suit was not contested by the defendants. The plaintiff was asked to proceed evidence by way of affidavit.

3. It is established in the affidavit by way of evidence that the plaintiff is a non-profit making body established on 23.08.1969 to monitor, protect and enforce the rights, interest and privileges of its members which consists of authors, composers and publishers of literary and musical works, as well as on behalf of members of other sister societies who are owners of copyright in their literary and musical works. The plaintiff has contended that it is, in fact, the sole representative body as also the sole national copyright society of authors, composers and publishers of literary and musical works. Its members consist not only of persons from this country but also other

nationalities.

4. The primary task of the Plaintiff Society is to collect Royalties from Users of Music and thereafter disburse the same to the Owners of the Copyright in the Music, whose interest it represents. The rates of royalty are decided collectively by the members of the Plaintiff Society.

PERFORMING RIGHTS:

5. Performing Rights under Indian law include: -

- The Right of Performing the Work in Public;
- The Right to Communicate the Work to the Public by making it available for being seen or heard or otherwise enjoyed by the public directly or any means of display or diffusion regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available and;
- The Right of authorizing any of the aforesaid acts.

6. Music is made by a team of persons comprising different talents and consequently, the copyright in the different components of music may belong to a number of individuals.

COPYRIGHTS

7. Under the Act, Lyric Writers and Music Composers create works, which are recognized as "Literary", and "Musical Works" as defined under Sections 2 (o) and 2 (p) of the Act respectively. Thus,

while the Music Composer is the owner of the Copyright in the "Musical Work-as defined in Section 2 (p) of the Act, the Lyric Writer is the owner of the Copyright in the "Literary Work" as defined in Section 2 (o) of the Act. Section 14 of the Act further provides exclusive rights to the owners of such works. Further, under explanation to Section 2 (ff.) of the Act, 'communication to the public' includes, within its ambit the communication of any works by satellite or cable or any other means of simultaneous communication to Hotel Rooms.

EXCLUSIVE RIGHTS OF A COPYRIGHT OWNER:

8. Under the Act, the Owner of the Copyright in the Literary or Musical Works enjoys a number of rights exclusively. These rights are set out in Section 14 (a) of the Act and include the Right to Perform the Work in Public or communicate it to the Public. Thus, every broadcasting organization, shop, departmental store, showroom, emporium, restaurant, hotel, club, disco, bars, office establishments, television channels, music concerts etc. which play music, impinges on this right unless it seeks the permission of the Plaintiff Society.

PHONOGRAPHIC PERFORMANCE LIMITED:

9. Phonographic Performance Limited (*hereinafter referred to as PPL*), is also a company incorporated under the provisions of the Indian Companies Act, 1956. PPL is engaged in the business of carrying on Copyright business of its members in **SOUND RECORDINGS** in, which rights vests with its

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members who are leading music companies in India. PPL was granted registration under Section 33 of the Indian Copyright Act, 1957, as a Copyright Society on 7th May, 1996, *vide* registration **No. CS/03/SOUND RECORDING/96**. This registration entitles it to charge and collect license fees from users for **SOUND RECORDINGS** as defined in **Section 2 (xx)** of the Act for which rights vests in its members. PPL, is therefore, charging and collecting license fees from users on behalf of its member companies who hold rights to the cassettes, compact discs and such other media of **SOUND RECORDING** which are played and performed in public.

10. The Plaintiff Society and PPL, though both registered under Section 33 as Copyright Societies, are infact registered for and in two different categories, *viz., literary & musical works and sound recordings*.

11. As per plaintiff, one of the principal objectives therefore of a Collecting Society like the Plaintiff Society is to act for all Lyric Writers and Music Composers, collectively. Not only is the Plaintiff Society a body with a statutory legitimacy, but is also indeed a practical and indispensable mechanism for collecting royalties from various users of the copyright works of its members and then disbursing those royalties to such members. The royalties so collected, after deduction of administrative expenses upto a maximum of 15%, as prescribed under Rule 14H of the Copyright Rules, 1958, is thereafter distributed

amongst the Plaintiff Society's members and its foreign affiliates in proportion to the actual use of the works of such members.

12. Tariffs are fixed by the Members of the Plaintiff Society in their Annual General Meetings. The guiding principle in fixing the Tariff Rate is the importance or value addition of music to the user organizations. Tariff Rates applicable to establishments differ on the basis of their size, stature and revenues earned. Fixation of Tariffs is based on the principle that there are three types of establishments, namely:

- Those for whom Music is an absolute Necessity such as Channel-V on television or live music concerts whose entire business is founded on playing music. Obviously, the Tariffs in this category of cases are the highest; and
- Organizations for whom Music adds to the Comfort. Thus, shops, departmental stores, showrooms, emporiums, hotels and restaurants that provide music as an added facility to their services fall in this category. It is pertinent to note that music is not a *sine qua non* for the survival of establishments in this category. The tariff for these organizations is relatively lower to the first category; and
- Organizations that can easily do without music, for example, petrol stations where the tariff would be the lowest.

13. The Plaintiff Society makes the obtaining of permission in the following manner :

- . **First**, there is no need to locate the owners. The Plaintiff Society has a collection of over 10 million Indian and Foreign Works, which comprise almost 95% of all music in the world on an individual basis. Thus, there is no need to contact, negotiate with or obtain permissions from any of these millions of right holders in the world.
- . **Second**, by paying an annual fee to the Plaintiff Society, an establishment obtains automatic permission to play music from the vast collection of millions of songs, both Indian and Foreign. The permission is automatic and immediate and no time and cost is lost in either traveling or in any other form of negotiations with the right holders.
- . **Third**, irrespective of the status of the Songwriters or Music Composers, there is a flat or uniform rate charged. This can be particularly important since if one were to individually negotiate with the artiste, then it may well be that some desire prohibitive prices for the use of their work.
- . **Fourth**, the emphasis of the whole system is to provide a single window clearance through which a user gets quick, automatic permission without any cost of travel or negotiation, for all works.

THE CASE OF THE DEFENDANTS:

14. The Defendant No.1 is the Manager of Defendant No.2, Mathura Restaurant and Bar, Mayureya Building, Near Dodhia Petrol

Pump, Kashimira, National Highway No. 8, Post Mira, Thane-401104.

15. It is stated that the Defendants have avoided obtaining a license to communicate to the public works belonging to Plaintiff's repertoire. The Defendants have been put on adequate notice of the Plaintiff's rights but to no avail. The details of the correspondence between the Plaintiff and the Defendants are detailed below:

- i) The Plaintiff last received the license fees in respect of Defendant No. 2 premises for the License Contract No. GL:THA:00447 until 31-12-2004 by way of cheque No. 137288 for the amount of Rs. 3285.00/-. Copy of receipt No. 2004-2005-1631 along with a copy of the license granted by the Plaintiff in favour of the Defendant No.2 is filed herewith.
- (ii) The Plaintiff issued an invoice no. 2004-2005_3888 dated December 17, 2004 calling upon the Defendant no. 2 to furnish license fee of Rs. 3,285/-for period January 1, 2005 to December 31, 2005. The aforesaid invoice is being filed in the present proceedings.
- (iii) Thereafter, the Plaintiff issued an invoice no. 2005-2006_5176 dated December 29, 2005 calling upon Defendant no. 2 to pay the license fees including arrears for the amount of Rs. 10,067.60/- for the period January 1,

2006 to December 31, 2006 including arrears for January 1, 2005 to September December 31, 2005 in respect of License Contract No. GL:THA:00447. The aforesaid invoice is being filed in the present proceedings.

- (iv) Thereafter, the Plaintiff issued an invoice no. 2006-2007_6733 dated December 19, 2006 calling upon Defendant no. 2 to pay the license fees including arrears for the amount of Rs. 19,515.94/- for the period January 1, 2007 to December 31, 2007 including arrears for the years beginning from January 1, 2006 and January 1, 2005 in respect of License Contract No. GL:THA:00447. The aforesaid letter is being filed in the present proceedings.

16. The Defendants' intention has been to avoid payment of the license fee due to the Plaintiff. And they continued their activities despite having been intimated of the due royalty through regular invoices.

17. As per the case of the plaintiff, the defendants' acts have not only caused at the very least a loss of Rs. 19,515.44/- to the owners of the copyright in works which were performed at the premises of the defendants on the date of filing of the suit.

18. An affidavit of the investigator has been filed in the present proceedings. The Plaintiff has identified the following songs played in the plaintiff's repertoire. The list of songs is as follows :

Songs played in Hotel Muhurtha Bar & Restaurant, Mumbai reported by the investigator				
<u>Song Title</u>	<u>Film Name</u>	<u>Composer</u>	<u>Author</u>	<u>Publisher</u>
Yeh paisa bolta hain	Kaala Bazaar	Rajesh Roshan	Payam Sayeedi	Venus Records
Leharon ki tarah <u>yaadein</u>	Nishaan	Rajesh Roshan	Gulshan Bawra	HMV
Sabko maloom hai main sharabi	Room No. 17	Pankaj Udhas	Anwar Farrokhbadi	Music India Ltd.
Jab koi baat bigad Zindagi ka safar hai	Jurm	Rajesh Roshan	Shyamlal Indivar	Venus Records
I yeh kaisa	Safar	Kalyanji Anandji	Shyamlal Indivar	HMV

19. The Defendants are publicly performing as well as communicating to the public, the literary and musical works, sound recordings and audiovisual songs embodying the literary and musical works belonging to the repertoire of the plaintiff without having obtained a license from the plaintiff to do so.

20. The plaintiff states that the defendants' acts of infringement clearly constitute a gross infringement not to mention the resultant damages being vested on the Plaintiff and it amounts to blatant and willful infringement of copyright.

JUDICIAL RECOGNITION OF THE PLAINTIFFS RIGHTS:

21. The Plaintiff has taken steps to protect its proprietary and common law rights in earlier actions before this Court, as set out in the following chart: -

TITLE	SUITNO.	JUDGE	ORDER PASSED
The Indian Performing Right Society Ltd. v. Mr. S. L. Kumar & Anr.	2010 of 1999	Hon'ble Justice Manmohan Sarin	Suit decreed in terms of compromise on 13/01/2000. Compromise included • Acknowledgment by

			Defendant of Plaintiff's public performance rights • Undertaking not to infringe in future • Defendant obtained a formal license from the Plaintiff by paying royalties
The Indian Performing Right Society Ltd. v. Mr. I. S. Kohli & Ors.	720 of 2000	Hon'ble Justice Vikramajit Sen	<i>Ex parte ad interim</i> interim injunction granted on 27/04/2000.
The Indian Performing Right Society Ltd. v. Mr. Kabir Advani & Ors.	721 of 2000	Hon'ble Justice Vikramajit Sen	<i>Ex parte ad interim</i> interim injunction granted on 27/04/2000 and suit decreed in terms of compromise application on 17/8/2000
The Indian Performing Right Society Ltd. v. Mr. Ashok Kinra & Ors.	1000 of 2000	Hon'ble Justice Vikramajit Sen	<i>Ad interim ex parte</i> injunction granted and thereafter decreed in terms of compromise application on 17/8/2000
The Indian Performing Right Society Ltd. v. Mr. Rajesh Karula & Ors.	1001 of 2000	Hon'ble Justice Vikramajit Sen	<i>Ex parte ad interim</i> injunction granted on 22/05/2000.
The Indian Performing Right Society Ltd. v. Mr. Jairam Mani & Ors.	2554 of 2001	Hon'ble Justice J.D. Kapoor	<i>Ex parte ad interim</i> injunction granted on 12/12/2001.
The Indian Performing Right Society Ltd. v. International	448/2002	Hon'ble. Justice Dr. M.K. Sharma	<i>Injunction granted</i> after arguments on 6 March 2002.
Amusements Limited and Anr.			
The Indian Performing Right Society Ltd. v. Nanu Resorts and Anr.	129/2002	Hon'ble Justice D.K. Jain	<i>Ex parte ad interim</i> injunction on 12.1.2002 under terms of which Defendant given one week to clear outstanding dues failing which the injunction was to come into force.

The Indian Performing Right Society Ltd. v. Gaurav Jain and Ors.	1050/2002	Hon'ble Justice Sharda Agarwal	<i>Ex parte ad interim</i> injunction granted on 31 st May 2002
The Indian Performing Right Society Ltd. v. Mr. Gauram Radia and Ors.	1077/2002	Hon'ble Justice Dalveer Bhandari	<i>Ex parte ad interim</i> injunction granted on 14 th June 2002 Injunction granted in light of clear delineation of rights of PPL from IPRS
The Indian Performing Right Society Ltd. v. Alcon Victor Group of Hotels	1341/2002	Hon'ble Mr. Justice Vikramajit Sen	Suit decreed in favour of the IPRS on 8 th January 2003
The Indian Performing Right Society Ltd. v. Kamat Inns Pvt. Ltd. and Ors.	79 of 2003	Hon'ble Mr. Justice Manmohan Sareen	<i>Ex parte ad interim</i> injunction granted on 14 th January 2003.
The Indian Performing Right Society Ltd. v. Mr. Vinod Gulati & Ors.	1861/2003	Hon'ble Mr. Justice Mr. C.K Mahajan	<i>Ex parte ad interim</i> injunction granted on 6 th November 6 th 2003
The Indian Performing Right Society Ltd.v. Gujarat JHM hotels Ltd. and Anr.	1440/2003	Hon'ble Mr. Justice Mr. Manmohan Sarin	<i>Ex parte ad interim</i> injunction granted on July 23 rd 2003 Permanent Injunction granted and matter decreed in terms of compromise application
The Indian Performing Right Society Ltd. V. Akash Kalra & Anr.	1775/2003	Hon'ble Mr. Justice Mr. R.C Chopra	<i>Ex parte ad interim</i> injunction granted on 26 th September 2003
The Indian	1074/2003	Hon'ble Mr.	<i>Ex parte ad interim</i>

The Plaintiff has relied upon certain facts and documents which are enumerated in the following paras :

21. The plaintiff Society, a company limited by guarantee

under the Companies Act (Memorandum and Articles of Association Ex PW1/2). It is non-profit body registered as a Copyright Society under Section 33 of the Act (*Registration certificate* Ex PW1/3).

22. The Plaintiff's repertoire is easily identified by the public. Any work of any of the Plaintiff's members is necessarily in the Plaintiff's repertoire, since the Plaintiff obtains a complete assignment of performing rights in respect of all existing and future works. The list of the Plaintiff's members is publicly available on the Plaintiff's website <http://www.iprs.org>. The Plaintiff's tariff is transparently available to the public at the Plaintiff's website <http://www.iprs/tariff.org>. The details of plaintiff's membership is given as Exh. P-1/4.

23. Defendant No.2 is Muhurtha Restaurant and Bar, had duly taken the licence of the Plaintiff Society in the past vide License Contract No. GL:THA:00447 and had been making regular payments to the Plaintiff Society up to 31st December 2004. This was admittedly done with the consent and knowledge of Defendant No.1, being the Manager of Defendant No.2. The original licence contract no GL:THA:00447 (**Ex. PW1/11.**) The receipts confirming the said payments for the period of 1st January 2003 to 31st December 2003 and 1st January 2004 to 31st December 2004 (**Ex. PW1/12.**) Thane; Defendant No.1 is the Manager of Defendant No.2. Plaintiff has put the Defendants on notice for the necessity to obtain the Plaintiff's license since 2005 (**Ex. PW 1/12**). Plaintiff sent the Defendants another notice dated 14th October 2006 and thereafter an invoice for the period 1st December 2006 to 30th

November 2007 (**Ex PW1/13 and Ex PW1/14** respectively). The total licence fee owed by the Defendants till date is :

Sr No.	Party Name	Area	Period	Bill Amt	Int + Penalty	Vat	Total Bal
1.	Muhurtha Restaurant & Bar	Mira Road	01 Jan, 2005 To 31 Dec, 2011	1,14,285.00	1,73,896.74	3,935.00	2,92,116

24. On 01.11.2007, Mr. Mahesh Kadam made a sample recording and noted the songs being played within the defendants premises and found that the defendants continued to communicated to the public the literary and/or musical works of the members and /or their heirs of the Plaintiff Society. Recording of the songs along with a list of the songs, belonging to the Plaintiff's repertoire as identified by the Plaintiff's employees who stayed at the hotel is filed in the present proceedings. Each of the above said Defendant is liable under Section 51 (a) (i) read with section 14(a) (iii) of the Copyright Act, for infringement of the Plaintiff's copyright. Defendant No.2 is liable for infringement of Plaintiff's copyright under Section 51(a) (ii), read with section 14(a) (iii) of the Act.

25. The Plaintiff monitors, protects and enforces the rights, interest and privileges of its members comprising of authors, composers and publishers of literary and musical works. The Plaintiff is the exclusive copyright owner of the performing rights in respect of the entire repertoire of literary and musical works under Section 14 (a) (iii) of the Act. Administration of rights : The Plaintiff administers the
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said rights as per section 34 of the Act. Assignment of Rights: Under Section 14 (a) (iii) Act, the rights assigned to and administered by the Plaintiff, commonly known as “performing rights”, are the rights referred to in section 14(a)(iii) of the Act, being: (1) The right of performing the work in public; (2) The right to communicate the work to the public by making it available for being seen or heard or otherwise enjoyed by the public directly or any means of display or diffusion regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available; and (3) The right to authorize any of these acts.

26. The evidence produced by the plaintiff has gone un rebutted. The witnesses of the plaintiff were cross examined by the defendant. Thus, the evidence of plaintiff is to be taken as correct as the plaintiff has been able to establish its case as per plaint. Thus, the plaintiff is entitled for the decree claimed for.

27. Defendants Nos. 1 and 2 are restrained from infringing the Plaintiff's copyright by communicating to the public the Plaintiff's repertoire comprising of works of all its members, which it is authorized to administer in India, without obtaining a license from the Plaintiff or doing any other act infringing the Plaintiff's copyrights.

28. The plaintiff is also entitled for costs and punitive damages to the tune of Rs.1 lac.

MANMOHAN SINGH, J.

NOVEMBER 08, 2011