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

+ CS(COMM) 16/2015

% *Judgment dated 23rd September, 2016*

SUPER CASSETTES INDUSTRIES

PRIVATE LIMITED

..... Plaintiff

Through : Ms.Prachi Agarwal, Adv.

versus

SHEKHAWATI AB TAK CABLE NETWORK Defendant

Through : *Ex parte*

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for permanent injunction restraining infringement of copyright, damages, rendition of accounts, etc. The plaintiff has also filed I.A. 24942/2015 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure along with the present suit.
2. It may be noticed that the present suit and the application for interim relief was initially listed before this Court on 7th December, 2015, on which date, while issuing summons in the suit and notice in the application, an *ex parte ad interim* order was passed by the Court restraining the defendant from broadcasting, distributing and communicating to the public cinematographic films, sound recordings and all other related works including the musical works of the plaintiff. Thereafter attempts were made to serve the

defendants. On 8.3.2016, this Court had observed that the defendant had refused to accept the service. Vide order dated 1.4.2016, the defendant was proceeded *ex parte* and the interim order dated 7.12.2015 was made absolute till the disposal of the suit. The plaintiff has also filed *ex parte* evidence of Mr.S.K. Dutta, Deputy General Manager of the plaintiff company (PW-1) which is marked as Ex.PW-1/A. The plaintiff has also filed *ex parte* evidence of Mr.Mohit Sharma, Executive with the plaintiff (PW-2) which is marked as Exhibit PW-2/A.

3. The brief facts of the case, for disposal of the present commercial dispute are that the plaintiff, Super Cassettes Industries Private Limited, is a Limited Company incorporated under the Companies Act having its registered office at E-2/16, White House, Ansari Road, Daryaganj, New Delhi.
4. As per the plaint, the plaintiff is one of the largest and most reputed music companies in the country. The plaintiff was established as a Private Limited Company, being Super Cassettes Industries Pvt. Ltd., in the year 1983. It became a deemed Public Limited Company under the Companies Act in the year 1988-89 and later w.e.f 11th June 2014, the company has converted to a Private Limited Company. The plaintiff has, since its inception, been engaged in the business of manufacturing and marketing audiocassettes, which has been expanded to include production and marketing of video cassettes; compact discs (CDs) (both blank and pre-recorded), television sets, two-in-ones, tape recorders, CD players, fans, mineral water, etc., all sold under the brand 'T-

SERIES’.

5. Apart from its music label, the plaintiff has further widened the scope of its offering and ventured into the business of film production and distribution. The plaintiff is, thus, the owner of a large repertoire of copyright works comprising *inter-alia* of cinematographic films, sound recordings and underlying musical and literary works, which are its most precious assets. T-SERIES has over 20,000 Hindi films and non-film songs and around 50,000 songs in regional languages to its credit. Its vast repertoire adds up to tens of thousands of hours of invaluable music, which is expanding every single day.
6. As per the plaint, the plaintiff has a number of exclusive recording arrangements with some of the well-known artists/singers and has also initiated Music Bank, the first in the country, which is a storehouse of old and new titles. The plaintiff also has state-of-the-art facilities for the purpose of recording music and is arguably the largest promoter of new talent in India, with several stars of today starting their careers with the plaintiff. The plaintiff has also launched and/or promoted many songwriters, Music-Directors and Video Directors. The Plaintiff has even established a Film Production Division, widening the scope of its offerings to the public.
7. The plaintiff acquires copyright in all the literary, musical and other works which it commissions and manages through assignments from the authors or other prior owners of copyright in the same. Further, as producer thereof the plaintiff is itself the corporate

author of and the first owner of copyright in those sound recordings and audio visual works(cinematograph films) which the plaintiff itself produces by taking the initiative and responsibility for the same. The plaintiff's repertoire is easily identified by the public, since all the CDs/DVDs/VCDs apart from T-Series logo contain the following copyright notice as required under Section 52A of the Copyright Act at the bottom of the CD/VCDs/DVDs, respectively:

“ © & ® Manufactured at Noida (U.P) by SUPER CASSETTES INDUSTRIES LIMITED, E-2/16, White House ,Ansari Road, Darya Ganj, New Delhi-110 002 (INDIA) All rights of the producer and the owner of the recorded work reserved. Unauthorized copying, public performance, broadcasting, usage, publishing adapting, synchronization, hiring or rental of this recording prohibited. Offenders shall be liable to damages and prosecution. Tel.:0120-2515102, 2515116, 2515117, 2515118. Fax: 0091-1202515110 & 2515121.”

8. The plaintiff's business activities also include giving licences to various organizations for the use of its repertoire of copyrighted works comprising of cinematograph films, sound recordings and underlying musical and /or literary works.
9. The plaintiff has been diligent in protecting its intellectual property rights by filing various suits in different courts against Multi System Operators/ Ground Cable Network Operators. Details of such cases have been extracted in para 17 of the plaint.
10. Learned counsel for the plaintiff submits that defendant is a Ground

Cable Operator carrying on its business of providing cable television services to various subscribers having operation throughout India including Sikar and other States of Rajasthan under the logo 'AB TAK'. As per the petitioner, the defendant is one of the largest Ground Cable Network providers in the State of Rajasthan having approximately fifty thousand connections. The defendant, through its cable network under the logo 'AB TAK' also provide services such as Cable Advertising and Non-Stop Entertainment wherein they make extensive use of Hindi songs from commercial films, private albums and film extracts. The Defendant is broadcasting/communicating to the public, sound recordings, underlying works (lyrics and musical compositions) and audio visual songs (cinematograph films) and other works of the Plaintiff, through their Cable network under the logo "AB TAK", without any licence.

11. Learned counsel for the plaintiff further submits that in the month of September, 2015, the plaintiff first learnt about the infringement of its copyright in the course of random monitoring of the defendant's channels on a sample basis, which is a part of its normal activities. Thereafter the representative of the plaintiff contacted the defendant and informed about the plaintiff's Public Performance Licensing Scheme under the name of "T-Series Public Performance License (TPPL)" and the necessity of obtaining a license for making such broadcasts legal. Thereafter, the plaintiff addressed a communication dated 16th September 2015 to the defendant, informing about the plaintiff's rights and the necessity of

obtaining a license from the plaintiff in order to make their broadcasts legal, however, the defendant did not reply to the said letter. Thereafter a legal notice dated 5th October 2015 was sent to the defendants. The notice specifically stated that by communicating the aforesaid works of the plaintiff, the defendant had infringed the copyright of the plaintiff in the said works and was therefore liable to pay damages to the tune of Rs.25,00,000/- as past damages and also further reminding them of the need to obtain a license. The defendant refused service of the said notice.

12. Learned counsel for the plaintiff further submits that unlicensed use of the plaintiff's work by the defendant on their cable television network amounts to an infringement of the plaintiff's copyright. It is further submitted that the defendant is blatantly using the works of the plaintiff without obtaining prior permission or authorization from the plaintiff and hence, is causing enormous loss of revenue to the plaintiff. It is also submitted that the defendant is using the plaintiff's works for the purposes of generating revenue from its cable television subscribers at the expense of the plaintiff.
13. Learned counsel for the plaintiff contends that the defendant is regularly and repeatedly exploiting the plaintiff's works by broadcasting the same to their cable subscribers without a license and, therefore, is causing severe and irreparable damage to the plaintiff by multiple infringements of the plaintiff's rights. It is contended that the defendant has fifty thousand connections and, thus, in view of the number of connections and the rate card of the plaintiff on its website which specifically states "*The license fee for*

Cable Operator license is Rs. 18/- (Rupees Eighteen) per connection per house hold per month plus applicable taxes”, the damages are conservatively calculated to Rs. 1 crore.

14. I have heard learned counsel for the plaintiff and also examined the affidavits by way of evidence of PW-1 and PW-2, who have deposed on the lines of the plaint. Despite service, the defendant has decided not to contest the suit. The documents exhibited are as follows:

- Fresh certificate of incorporation has been exhibited as Exhibit PW-1/1;
- Minutes Book has been exhibited as Exhibit PW-1/2;
- Decisions rendered against Multi System Operators/Ground Cable Network Operators have been exhibited as Exhibit PW-1/3;
- A copy of the affidavit of Mr.Mohit Sharma, PW-2, along with CD/DVD containing the recording of infringing broadcasts on 5.9.2015 along with cue sheet containing the details indicating the film/album belonging to the plaintiff’s repertoire, duration of recording, etc., have been marked as Exhibit PW-1/4;
- A copy of the letter dated 16.9.2015, legal notice dated 5.10.2015 together with courier slips and refused envelopes of Registered AD and Courier have been marked as Exhibit PW-1/5 (Colly.) and Exhibit PW-1/6 (Colly.) respectively;
- Print outs of website of the plaintiff company have been exhibited as Exhibit PW-1/7;

- A copy of the Assignment Deed between the Super Cassettes Industries Pvt. Ltd. and Salman Khan Ventrues Pvt. Ltd for the movie ‘Bajrangi Bhaijaan’ dated 13.5.2015 has been marked as Exhibit PW-1/8A;
- A copy of the Copyright Certificate for the song ‘*Sunn Rahaa Hai*’ from the movie, Aashiqui 2, in favour of Super Cassettes Industries Limited, granted by the author, M/s Vishesh Films Pvt. Ltd. has been marked as Exhibit PW-1/8B;
- A copy of the Copyright Certificate for the song Subhanallah from the film ‘*Yeh Jawaani Hai Deewani*’ in favour of Super Cassettes Industris Lintied, granted by the author, M/s Dharma Productions Pvt. Ltd. has been marked as Exhibit PW-1/8C;
- A copy of the Copyright Certificate for the song Sunny Sunny from the film ‘Yaariyan’ in favour of Super Cassettes Industries Lintied has been marked as Exhibit PW-1/8D;
- A copy of the Copyright Certificate for the song Shanivaar Rati from the film ‘*Main Tera Hero*’ in favour of Super Cassettes Industries Limited, granted by the author, M/s Balaji Motion Pictures Limited, has been marked as Exhibit PW-1/8E.

15. Having regard to the submissions made and taking into consideration the *ex parte* evidence filed by the plaintiff, which is un rebutted, it is established that despite notice, the infringing activities of the defendant continued unabated and thus the plaintiff was left with no alternative but to file the present suit. It is stated that the record bears out that the said infringing broadcasts have been confirmed by Mr.Mohit Sharma, who under instructions of

Mr. S.K.Dutta, has been able to record such infringing broadcasts on the defendant's channel on a sample basis in September 2015. It is stated that even on a sample basis the plaintiff was able to detect various instances of infringement by the defendant in programmes broadcasted on its cable network under the logo of 'AB TAK'. The defendant was able to detect sound recordings, cinematograph films and underlying literary and musical works belonging to the Plaintiff's repertoire of audio video songs were communicated to the public, without the Plaintiff's permission or license, including:

- the song 'Suraj Dooba Hai' from the film 'Roy';
- the song 'Subhanallah' from the movie 'Yeh Jawani Hai Deewani';
- the song 'Aaj Blue hai Paani Paani' from the film 'Yaariyan';
- the song 'Sun Raha Hai Na Tu' from the film 'Aashiqui-2';
- the song 'Chal Beta Selfie Le Le Re' from the movie 'Bajrangi Bhaijaan'; etc.

16. It is also proved that the plaintiff company is the owner of copyright of the works broadcasted by the defendants on their channel on 5th September 2015 as detected by Mr. Mohit Sharma. The copies of sample Assignment Deeds which illustrate that the plaintiff company is the exclusive copyright owner of the said works being exploited by the defendant on its channel during the aforementioned periods has been placed on record.

17. It is also established that the defendant has caused to the plaintiff company substantial loss and damage on account of continuous infringement of its copyright and the same is disrupting the plaintiff

company's business, which depends partly on license income from the use of its copyrighted work. It is established on record that the plaintiff invests massive amounts to acquire copyrights from the authors and owner thereof and the same runs into many crores of Rupees. It is stated that other media and entertainment channels which regularly obtain licence, the fee runs into several lakhs of rupees. The usage of the plaintiff Company's repertoire by the defendant was detected. Therefore, the damages are claimed in the suit. It is submitted that the damages claimed by the plaintiff Company are nominal as compared to the license fees actually paid by other broadcasting organizations.

Punitive damages

18. With regard to the relief of damages as claimed by the plaintiff in para 37 (iv) of the plaint, this Court has previously granted both exemplary and punitive damages against the defendants in ex-parte matters of similar nature. In the case of ***Time Incorporated v. Lokesh Srivastava & Anr.***, 2005 (30) PTC 3 (Del.): 2005 (116) DLT 599, while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed as under:

“8. This Court has no hesitation on saying that the time has come when the Courts dealing actions for infringement of trade marks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law-breakers who indulge in violations with impunity out of lust for money so that they realise that in case they are caught, they would be liable not only to reimburse the

aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them. In Mathias v. Accor Economy Lodging Inc., 347 F.3d 672 (7th Cir. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's ability to profit from its fraud by escaping detection and prosecution. If a torfeator is caught only half the time he commits torts, then when he is caught he should be punished twice as heavily in order to make up for the times he gets away. This Court feels that this approach is necessitated further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such activities never maintain proper accounts of their transactions since they know that the same are objectionable and unlawful. In the present case, the claim of punitive damages is of Rs. 5 lacs only which can be safely awarded. Had it been higher even, this Court would not have hesitated in awarding the same. This Court is of the view that the punitive damages should be really punitive and not flea bite and quantum thereof should depend upon the flagrancy of infringement.”
(Emphasis Supplied)

19. Further, this Court in the case of **Microsoft Corporation v. Rajendra Pawar & Anr.**, reported at 2008 (36) PTC 697 (Del.), has held:

“22. Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade Court proceedings in a systematic attempt to jettison the relief sought by the Plaintiff. Such flagrancy of the Defendant's conduct is strictly deprecatory, and those

who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of Court proceedings does not de facto tantamount to escape from liability. Judicial Process has its own way of bringing to task such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the Court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective.

23. Punitive damages are a manifestation of equitable relief granted to an aggrieved party, which, owing to its inability to prove actual damages, etc., could not be adequately compensated by the Court. Theoretically as well as practically, the practice of awarding of punitive damages may be rationalized as preventing under-compensation of the aggrieved party, allowing redress for undetectable torts and taking some strain away from the criminal justice system. Where the conduct of the erring party is found to be egregiously invidious and calculated to mint profits for his own self, awarding punitive damages prevents the erring party from taking advantage of its own wrong by escaping prosecution or detection.”

(Emphasis Supplied)

20. In view of the facts of the present case, this Court is of the opinion that in the present case Rs. 5 lakhs as punitive damages be granted in favour of the plaintiff and against the defendant in terms of para 37 (iv) of the plaint.
21. The present suit is accordingly decreed in favour of the plaintiff and against the defendant in terms of prayers in para 37 (i) and (iii) of the plaint with Rs. 5 lakhs as punitive damages.

22. Let a decree sheet be drawn accordingly.

I.A. 24942/2015

23. Application stands disposed of in view of above.

SEPTEMBER 23, 2016

//msr

G.S.SISTANI, J