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

+ CS(OS) No.1023/2007

INDIAN PERFORMING RIGHT SOCIETY LTD. Plaintiff

Through: Mr. Pravin Anand, Ms. Geetanjali
Visvanathan and Ms. Asavari Jain,
Advs.

versus

VIJAY VERMA & ANR. Defendants

Through: Mr. Sushant Singh and Mr. Harsh
Vardhan Pathak, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **26.10.2016**

1. This order is in continuation of yesterday's order i.e. 25th October, 2016.
2. The counsel for the defendants, contending that the judgment dated 8th May, 2012 of the Division Bench of this Court in FAO(OS) No.423-424/2011 titled *Indian Performing Right Society Ltd. Vs. Aditya Pandey*, confirmed by the Supreme Court, holds that the plaintiff has no copyright in law, has taken me through the whole judgment. However, he finally agrees that the plaintiff has copyright in the songs which the defendants admittedly want to play in their hotel at Ludhiana and the said judgments do not hold to contrary.
3. The counsel for the defendants however states that the plaintiff, in the plaint in the suit, has mentioned about eight songs only.
4. The counsel for the defendants has also contended that the defendants only allow in their hotel premises to be used by event holders and/or patrons

of the defendants hotel and the responsibility of obtaining licence from the plaintiff before playing the music in which the plaintiff holds right, is of the said event holders or of the patrons.

5. I have enquired from the counsel for the defendants whether not under the provisions of the Copyright Act, 1957, the defendants are also prohibited from allowing their premises to be used for playing of music without obtaining the licence/permission from the holder of copyright therein.

6. The counsel for the defendants fairly states that this is the legal position.

7. Once that is so, I am of the view that the defendants cannot allow their premises to be used for playing music without either the defendants themselves or the event holder or the patron of the defendant hotel obtaining licence/permission from the holder of copyright therein. It matters not that the plaintiff in the plaint has mentioned only eight songs. The defendants are not entitled to play the songs/music or to allow their premises to be used by someone else therefor, without having the licence/permission of the owner of the copyright therein.

8. I have enquired from the counsel for the defendants whether the defendants have the permission/licence from any other person claiming copyright or whether the event holders or patrons of the defendants have licence from any other person claiming copyright.

9. The answer is in the negative.

10. The counsel for the defendants has also handed over in the court a copy of the judgment dated 3rd January, 2014 of the court of the Additional District Judge, Ludhiana in Original Suit No.4 titled ***Grand Marian Hotel***

Pvt. Ltd. Vs. Indian Performing Right Society Limited. He further states that the plaintiff has filed appeal before the High Court against the said judgment and which is pending consideration.

11. A perusal of the judgment of the court of the Additional District Judge, Ludhiana shows that the plaintiff herein and who was the defendant in that court has been restrained from interfering in day-to-day business of the defendants herein and from meting out any threats to the defendants.

12. I am of the view that the aforesaid judgment does not come in the way of this court, once finding a case in favour of the plaintiff, passing a decree therein. A decree of the court can certainly not amount to a threat or interference with the business of the defendants.

13. The counsel for the defendants has also contended that the plaintiff has filed the affidavit of an investigator to aver that the defendant was so playing the music/songs in which the plaintiff claims rights and without giving opportunity to the defendants to cross examine the said investigator, it cannot be established that the defendants have infringed the copyright to become liable for damages.

14. The counsel for the plaintiff states that subject to the defendants suffering an injunction, the plaintiff will not press for damages or costs.

15. I am of the view that once the plaintiff has given up the claim for damages and costs, the said question pales into insignificance particularly when it is not in dispute that the defendants allow their premises to be used for functions/events in which music is played.

16. In this view of the matter, a decree is passed in favour of the plaintiff and against the defendants, jointly and severally restraining the defendants from playing the music/songs in their premises or from allowing any other person to play music/songs in the premises of the defendants, without a licence or permission from the plaintiff or from whosoever may be holding the copyright therein and leaving the parties to bear their own costs.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

OCTOBER 26, 2016

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