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

+ **CS(COMM) 991/2016**

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Judgment dated 18th October, 2016

**SUPER CASSETTES INDUSTRIES
PRIVATE LIMITED**

..... Plaintiff

Through : Ms.Prachi Agarwal and Mr.K.K.
Khetan, Advs.

versus

**FUN CABLE NETWORK
Through**

..... Defendant

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.
2. Learned counsel for the plaintiff submits that summons in the suit and notice in the application for stay were directed to be issued vide order dated 24.11.2015, when an *ex parte ad interim injunction* was passed in favour of the plaintiff and against the defendant. Counsel further submits that in the order dated 7.1.2016 the learned Joint Registrar had noticed that service report through ordinary process is awaited, however, as per the track report filed by the plaintiff, the defendant has been served on 11.12.2015 but no Vakalatnama or written statement was filed. The plaintiff had also filed an affidavit of service. Counsel contends that despite service since the defendant did not enter appearance, it was proceeded *ex parte* and the interim order dated 24.11.2015 was made absolute on 5.4.2016. It is contended that having regard to the fact that neither any appearance has been entered nor written statement has been filed by the defendant and the defendant was proceeded *ex parte* on 5.4.2016, the present suit be decreed under the

provisions of Order VIII Rule 10 CPC in favour of the plaintiff and against the defendants. 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 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 audio cassettes, 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. It is the case of the plaintiff that the defendant, Fun Cable Network, located in Gurgaon, Haryana, is a Ground Cable Operator providing cable television services to various subscribers having operation throughout India including Districts of Haryana including Palwal under the logo **“HARIBOL, SKY HAWK”**, having approximately sixty thousand connections. The defendant, like any other cable operator, through their cable network under the logo **“HARIBOL, SKY HAWK”** provide services such as Cable Advertising and Non- stop Entertainment and make extensive use of Hindi songs/ film extracts to enhance viewership and increase revenue through advertising.
11. Learned counsel for the plaintiff further submits that on 15.9.2015 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 25.9.2015 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 19.10.2015 was sent to the defendant. The said 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.50,00,000/- as past damages and also further reminding them of the need to obtain a license. The defendant also did not reply to the same.

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 its prior permission or authorization and causing enormous loss of revenue to the plaintiff. It is also submitted that the defendant in the present instance is using the plaintiff’s works for the purposes of generating revenue from its cable television subscribers at the expense of the plaintiff’s statutory rights.
13. Learned counsel for the plaintiff contends that the defendant is regularly and repeatedly exploiting the plaintiff’s works by broadcasting the same through their cable network under the logo ‘HARIBOL, SKY HAWK’ 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 seven

lakhs 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”*, while the damages are conservatively calculated to Rs.1 crore.

14. I have heard learned counsel for the plaintiff and also examined the plaint, application and the affidavit 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 by the Courts 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 in September, 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 25.9.2015, legal notice dated 19.10.2015 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;
- Photocopy of the Certificate of Copyright for the song, 'Mujh ko Pehchaan Lo' from 'Don-2' in favour of Super Cassettes Industries Limited, granted by the author, M/s Excel Entertainment P. Ltd. and M/s Reliance Big Entertainment P. Ltd., has been marked as Exhibit PW-1/8A;
- Photocopy of the Certificate of Copyright for the song 'Nach le' from 'Bol Bachchan' in favour of Super Cassettes Industries Limited, granted by the author, M/s Fox Stars India (P.) Ltd. has been marked as Exhibit PW-1/8B;
- Photocopy of the Certificate of Copyright for 'Aarti-Vol 3) in favour of Cassettes Industries Limited has been marked as Exhibit PW-1/8C;
- Photocopy of Memorandum of Agreement dated 7.6.2012 between Salman Khan and Super Cassettes Industries Limited regarding the movie 'Jai Ho', granted by the authority, M/s Nandiadwala Grandson Entert. (P) Ltd. has been marked as Exhibit PW-1/8D;
- Photocopy of the certificate of copyright for the song 'Shree Hanuman Chalisa' in favour of Super Cassettes Industries 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, it is established that the infringing activities of the defendant continued unabated despite notice

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 on 15.9.2015. It is stated that even on a sample basis the plaintiff was able to detect various instances of infringement by the defendant on programmes broadcasted on its cable network under the logo of '**HARIBOL, SKY HAWK**', wherein sound recordings, cinematograph films and underlying literary and musical works belonging to the Plaintiff's repertoire of audio video songs '**Aartiyan**' sung by **Anuradha Paudwal**, '**Bas Tere Liye**' from the film '**Jai Ho**'; '**Nach Le Je Bharke Ke Nach Le**' from the film '**Bolb Bachchan**'; and '**Main Hoon Don**' from the film '**Don 2**', etc. were communicated to the public, without the plaintiff's permission or license.

16. Based on the evidence placed on record it is established that the plaintiff company is the owner of copyright of the works broadcasted by the defendants on their channel in 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. I am of the view that the defendant has caused the plaintiff company substantial loss and damage on account of continuous infringement of its copyright and the same is disrupting 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 and has been proved. Therefore damages are claimed in the suit. The counsel for the plaintiff has 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.
19. In the case of ***Time Incorporated Vs. Lokesh Srivastava & Anr.***, reported at 2005 (30) PTC 3 (Del.), while awarding punitive damages of Rs.5 lakhs in addition to compensatory damages also of Rs.5 lakhs, a Justice R.C. Chopra observed that “*time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation 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.*”
20. Further, this Court in the case of ***Microsoft Corporation Vs. Rajendra Pawar & Anr.***, reported at 2008 (36) PTC 697 (Del.), has held “*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 tasks 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.”

21. In view of the facts of the present case, this Court is of the opinion that in the present case Rs.5,00,000/- as punitive damages be granted in favour of the plaintiff and against the defendant in terms of para 37 (iv) of the plaint.
22. Accordingly, the present suit is decreed in terms of the plaintiff and against the defendants in terms of paragraphs 37(1) and (iii) of the plaint along with damages of Rs.5,00,000/-. Let a decree sheet be drawn up accordingly.

I.A. 24238/2015

23. In view of the order passed in the suit, interim order dated 24.11.2015 is made absolute.
24. Application stands disposed of.

G.S.SISTANI, J

OCTOBER 17, 2016

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