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

+ CS(OS) 3292/2015

% *Judgment dated 26th October, 2016*

Super Cassettes Industries Pvt Ltd Plaintiff

Through : Ms. Prachi Agarwal, Adv.

versus

Param Hans City Cable Network Defendant

Through: None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The 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 were issued vide order dated 22.01.2016, when an *ex parte ad interim injunction* was passed in favour of the plaintiff and against the defendant. Counsel further submits that on the next date of hearing, i.e. 23.05.2016, since the defendant had refused to accept service and none was present on behalf of the defendant, the defendant was proceeded *ex parte*. The plaintiff has also filed the *ex parte* evidence of Mr. S.K. Dutta, PW-1 and Mr. Mohit Sharma, PW-2.
3. As per the plaint, the plaintiff company was initially established as a private limited company, 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 thereafter on 11.06.2014, the company has converted to a private limited company.

4. The plaintiff company has been engaged in the business of producing and marketing audio cassettes, video cassettes, compact discs, televisions, CD players etc., all sold under the brand 'T-SERIES'. 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 film 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.
5. 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.
6. As per the plaint, 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:

“ © & P 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.”

7. The plaintiff's business activities also include giving licenses 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.
8. 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.
9. It is the case of the plaintiff, defendant is a ground cable operator carrying on its business of providing cable television services under the name 'Param Hans City Cable Network' to various subscribers having operation throughout India including the state of Rajasthan including Chirawa and adjoining area. 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 its cable network without any licence. The plaintiff, in the course of random monitoring of the defendant's channels, had stumbled upon the infringing broadcasts. Recordings of the infringing broadcasts were made by one Mr. Mohit Sharma, under instructions from the plaintiff on 03.09.2015. The plaintiff was able to detect various instances of infringement by the Defendant through their cable network, wherein sound recordings, cinematograph films and underlying literary and musical works belonging to the plaintiff's repertoire of audio-video songs 'Saara Jahan Kahe Ishq Hai Jhuta' from the film 'Ek Khiladi Ek Haseena', the song 'Wo Sharaabi Kya Sharaabi' from the movie 'Musafir', the song 'Abhi to Main Jawaan Hoon' from the film 'Killer', the song 'Main Duniya Bhula Dunga' from the film 'Aashiqui' etc 'were communicated to the public, without the plaintiff's permission or license.

10. On coming to know that the defendant was broadcasting/communicating to the public the plaintiff's copyright works, the plaintiff's representative contacted the defendant informing the defendant 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.
11. Thereafter, the plaintiff addressed a letter to the defendant dated 16.09.2015, informing it 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 chose not to reply to the said letter. The plaintiff addressed another legal notice/ cease and desist notice dated

05.10.2015 to the defendant specifically detailing the instances of infringement and stating that it should cease all further broadcasts. As per the plaintiff, both the letter dated 16.09.2015 and notice dated 05.10.2015 were duly served upon the defendant; but the defendant contumaciously continued to infringe copyright of the plaintiff.

12. It is the case of the plaintiff that such unlicensed broadcasts of the plaintiff's work by the defendant on their cable television network amounts to an infringement of the plaintiff's copyright. Since the notices of the plaintiff have been ignored, it has been constrained to file the present suit. The plaintiff has submitted that the defendant has about seventy thousand connections and the license fee for cable operator is Rs. 18/- per month per household and therefore, the damages are conservatively calculated at Rs. 25 lakhs.
13. The plaintiff in the suit seeks a permanent injunction to restrain the defendants from, inter alia, engaging in communication to the public, reproduction, recording, distributing, broadcasting or otherwise publishing or exploiting any cinematographic films, sound recordings, literary works or musical works in which the plaintiff owns the copyright
14. I have heard the 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. The plaintiff has filed 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 and has been accordingly proceeded *ex parte*. The documents exhibited are as follows:
 - Certificate of incorporation has been exhibited as Exhibit PW-1/1;
 - Minutes of meeting dated 16.06.2014 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;
- Affidavit of Mr. Mohit Sharma along with the compact Disc/DVD containing the recording of infringing broadcasts on 3rd September 2015 has been exhibited as Exhibit PW-1/4;
- Letter dated 16th September 2015 sent on behalf of plaintiff to defendant has been exhibited as Exhibit PW-1/5;
- Legal Notice dated 05th October 2015 sent on behalf of plaintiff to defendant has been exhibited as Exhibit PW-1/6;
- Rate card of the plaintiff has been exhibited as Exhibit PW-1/7;
- The copies of Copyright Certificates illustrating that the Plaintiff is the exclusive copyright owner has been exhibited as Exhibit PW-1/8A to Exhibit PW-1/8E;
- CD/DVD recordings of the infringing broadcasts made on 3rd September 2015 has been exhibited as Exhibit PW-2/1;
- Cue-sheets containing details of infringing broadcasts such as time of recording, film/album belonging to the Plaintiff's repertoire, duration of infringement has been exhibited as Exhibit PW-2/2;
- Screenshots of some of the infringing broadcasts on 5th November 2015 has been exhibited as Exhibit PW-2/3;

15. Learned counsel for the plaintiff further submits that unlicensed use of the plaintiff's works by the defendant on their cable television network amounts to infringement of the plaintiff's copyright. It is further submitted that the defendant is blatantly using the works of the plaintiff without the prior permission or licence and is causing enormous loss of revenue to the plaintiff. The plaintiff states 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's statutory rights. In support of this contention, counsel has relied upon decisions of this court rendered in the case of ***Super Cassettes Industries v. Badshah Internet Service Pvt Ltd & Anr.***, CS (COMM) 591/2016 dated 06.09.2016, ***Super Cassettes Industries v. Maury Diginet Pvt Ltd***, CS (OS) 2449/2012 dated 15.07.2015 and ***Super Cassettes v. Rachana TV***, CS (OS) 1742/2009 dated 13.05.2013.

16. Learned counsel for the plaintiff contends that the defendant is regularly and repeatedly exploiting the plaintiff's works by broadcasting the same to its cable subscribers without a license and therefore, is causing severe and irreparable damage to the plaintiff by multiple infringements of the plaintiff's statutory rights.
17. I have given my thoughtful consideration to the submissions made by the learned counsel for the plaintiff and tested the averments made in the plaint.
18. The plaintiff has claimed copyright in sound recordings and audio visual works (cinematograph films). By virtue of Section 14 (d) and (e), copyright includes the exclusive right to communicate to the public a cinematograph film or sound recording. 'Communication to the public' has been defined in Section 2 (ff). An explanation has been appended to S. 2(ff) by the legislature, which reads as under:

“Explanation.—For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;”

19. From the foregoing, there can be no doubt that the exclusive right to communicate to the public a sound recording or cinematograph film in within the domain of the owner of the copyright or any person

authorised or licensed by it. The explanation brings the activities Multi System Operators/ Ground Cable Network Operators, as in the present case, within the definition. Section 51 clearly stipulates that the copyright in a work will be deemed to be infringed whenever any person does anything within the exclusive domain of the copyright owner.

20. On the basis of evidence led, it is proved that the plaintiff company is the exclusive copyright owner of copyright of the works broadcasted by the defendant on their channel. The content of songs and videos broadcast are communication to the public and amounts to infringement.
21. I am satisfied that the defendant has infringed and is continuing to infringe copyright of the plaintiff. As a result, the suit is decreed

PUNITIVE DAMAGES

22. With regard to the relief of damages as claimed by the plaintiff in para 37 (iv) of the plaint, the plaintiff has relied upon ***Time Incorporated v. Lokesh Srivastava & Anr.***, 2005 (30) PTC 3 (Del): 2005 (116) DLT 599, wherein 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)

23. This Court in the case of **Microsoft Corporation v. Rajendra Pawar & Anr., 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)

24. This Court in the case of ***The Heels v. Mr. V.K Abrol and Anr.***, **CS(OS) NO.1385 of 2005 decided on 29.03.2006** has held:

“11. This court has taken a view that where a defendant deliberately stays away from the proceedings with the result that an enquiry into the accounts of the defendant for determination of damages cannot take place, the plaintiff cannot be deprived of the claim for damages as that would amount to a premium on the conduct of such defendant. The result would be that parties who appear before the court and contest the matter would be liable to damages while the parties who choose to stay away from the court after having infringed the right of the plaintiff, would go scotfree. This position cannot be acceptable.

12. No doubt it is not possible to give an exact figure of damages on the basis of actual loss, but certain token amounts on the basis of the sales of the plaintiff can certainly be made. The plaintiff is unnecessarily dragged into litigation and the defendants must bear consequences thereof. In fact in such a case both compensatory and punitive damages ought to be granted apart from the costs incurred by the plaintiff on such litigation. In view of the given sales figure of the plaintiff, I consider it appropriate to grant a decree of damages in favor of the plaintiff and against the defendants for a sum of Rs 3 lakh apart from costs of the suit.

(Emphasis Supplied)

25. In view of the facts of the present case, this Court is of the opinion that Rs. 5 lakh as punitive damages be granted in favour of the plaintiff and against the defendant in terms of para 37 (iv) of the plaint.
26. Accordingly, the present suit is decreed in favour of the plaintiff and against the defendant in terms of paras 37 (i) and (iii) of the plaint along with punitive damages of Rs. 5 lakh.
27. Let a decree sheet be drawn accordingly.

OCTOBER 26, 2016

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G.S.SISTANI, J