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

+ CS(OS) 3267/2015

**SUPER CASSETTES INDUSTRIES
PRIVATE LIMITED**

..... Plaintiff

Through: Mr. K.K. Khetan, Advocate

versus

FRIENDS CABLE NETWORK

..... Defendant

Through: None.

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Date of Decision: 19th December, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction restraining infringement of copyright, damages, rendition of accounts etc. The prayers made in the plaint are reproduced hereinbelow:-

“37.....

(i) An order of permanent injunction restraining the Defendant, their officers, servants, agents, partners and representatives and all others acting for and on their behalf from either engaging in themselves or from authorizing, the recording, distributing, broadcasting, public performance/communication to the public or in any other way exploiting the cinematograph films, sound recordings and/or literary works (lyrics) and Musical

works (musical composition) or other work or part thereof throughout India, that is owned by the Plaintiff including all works whereon the Plaintiff has shown its copyright under Section 52A of the Copyright Act or doing any other act that would lead to infringement of the Plaintiff's copyright;.

(ii) An order for rendition of accounts of profits directly or indirectly earned by the Defendant, their officers, servants, agents, partners and representatives and all others acting for and on their behalf from their infringing activities and unlawful conduct throughout India and a decree for the amount so found due to be passed in favour of the Plaintiff;

(iii) An order of delivery up to the Plaintiff or its authorized representative by the Defendant, their officers, servants, agents, partners and representatives and all others acting for and on their behalf, of all infringing tapes, copies and negatives, etc bearing the copyrighted materials of the Plaintiff;

(iv) An order requiring the Defendants their officers, servants, agents, partners and representatives and all others acting for and on their behalf, to pay the Plaintiff damages to the tune of Rs. 25,01,600/- towards past damages and further grant future damages along with pendent lite and future interest @ 18% p.a. till the time the decretal amount is paid;

(v) An order awarding the costs of the present suit to the Plaintiff."

2. On 22nd January, 2016, this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendant. The relevant portion of the said order is reproduced hereinbelow:-

"4. In the circumstances, the defendants, their officers, servants, agents and representatives and all

others acting for and on their behalf during the pendency of the present suit are restrained from authorizing, the recording, distributing, broadcasting, public performance /communication to the public or in any other way exploiting the cinematograph films, sound recordings and/or literary works(lyrics) and Musical works (musical composition) or other work or part thereof throughout India, that is owned by the plaintiff, including all works whereon the Plaintiff has shown its copyright under section 52A of the Copyright Act or doing any other act that would lead to infringement of the plaintiff's copyright, through its Ground Cable Network."

3. Since defendant did not enter appearance despite service, it was proceeded ex parte vide order dated 23rd October, 2017 and the ex parte interim injunction was confirmed till disposal of the suit.

4. It is the plaintiff's case that it is one of the largest and most reputed music companies in the country and is the owner of a large repertoire of copyrighted works comprising cinematographic films, sound recordings etc. operating under the brand "**T-SERIES**".

5. It is further stated that plaintiff's business also includes giving licences to various organizations such as Broadcasting Organizations, Television Channels, FM Radio Stations, Multi-System Operators (MSO) and Cable TV Operators etc. for the use of its copyrighted works.

6. Mr. K.K. Khetan, learned counsel for the plaintiff states that the defendant-Friends Cable Network is one of the largest ground cable network providers based in Sirsa, Haryana and is providing Cable Television services under the logo "ZM" to various subscribers having operations throughout India including State of Haryana. He further

states that the defendant provides services such as Cable Advertising and Non Stop Entertainment wherein it makes extensive use of Hindi songs from commercial films, private albums and film extracts.

7. He states that in August, 2015 in the course of random monitoring of the defendant's channels, the plaintiff company came to know about the unauthorized and unlicensed use of its copyrighted works on the defendant's cable television network. He further states that on coming to know of the said infringement, the plaintiff sent a letter dated 17th August, 2015 and a legal notice dated 23rd September, 2015 giving specific instances of infringement of the plaintiff's repertoire by the defendant and requesting it to obtain the requisite public performance license to make its broadcasts legal. However, no reply was received.

8. The plaintiff has filed its evidence by way of two affidavits. One affidavit of PW-1 Mr. S.K. Dutta and another of PW-2 Mr. Mohit Sharma.

9. PW-1 has relied upon various decisions regarding the plaintiff's copyright works as Ex. PW-1/3(colly). PW-1 has further proved the copies of copyright certificates illustrating that the plaintiff is the exclusive copyright owner of the aforementioned copyrighted works as Ex.PW-1/4 to Ex.PW-1/6. The letter dated 17th August, 2015 and legal notice dated 23rd September, 2015 have been proved as Ex.PW-1/7 (colly) and Ex. PW-1/8 (colly). The plaintiff's rate card on its website is proved as Ex. PW-1/9. PW-1 in his affidavit stated "*... That as per the information available, the Defendant has Ten thousand connections and the same was specifically stated in the legal notice*

addressed to the Defendant. The said legal notice sent through the courier was received back with the remark 'Refused' and the legal notice sent by the Registered A.D. Post received back with the remark "Unserved" with procured report.....I say that the defendant was well aware about the contents of the legal notice sent by courier as well as Registered Post. Thus, the Defendant is actively participating in the same and has an active knowledge of their infringing activities which is the subject matter of this present suit....I say that the subscription rate of the Plaintiff per account is charged at INR 18 per month. Therefore, I further state that the losses for the entire period of two and half (2½) months to the Plaintiff would amount as :-

10,000 (Subscriptions) x 18 (Per month license fee) x 2½ (No of months) = INR 4,50,000.00"

10. PW-2 has proved the CD/DVD recordings of the infringing broadcasts made on 11th August, 2015 along with cue-sheets containing details of infringing broadcasts such as time of recording, film/album belonging to the plaintiff's repertoire, duration of recording and reading along with the screenshots of the CD recordings as Ex. PW-2/1 and Ex. PW-2/2. Further, screenshots have been exhibited as Ex. PW-2/3 (colly).

11. Having heard learned counsel for the plaintiff and having perused the ex parte evidence as well as documents placed on record, this Court is of the opinion that plaintiff has proved the facts stated in the plaint and has also exhibited the relevant documents in support of its case.

12. A bare perusal of the screenshots of the infringing recording Ex. PW-2/3(colly) shows the logo of the plaintiff 'T-SERIES'. This proves that the defendant was aware that the audio visual work broadcasted on their network belonged to the plaintiff. A perusal of the cue sheet also shows that the defendant has amongst others infringed the sound recordings, cinematograph films and underlying literary and musical works belonging to plaintiff's repertoire of songs 'Munni Badnaam Hui' from the film 'Dabang', the songs 'Tujhse Mohabbat Ho Gayi Alah Maaf Kare' and 'Assi Haan Sikh' from the film 'Desi Boyz'.

13. Since the plaintiff's evidence has gone un rebutted, said evidence is accepted as true and correct. In the opinion of this Court, the defendant has deliberately stayed away from this Court's proceeding with a view to frustrate the plaintiff's claim for damages. The said act is unjustified.

14. As the defendant has broadcast the plaintiff's video songs without any license, this Court is further of the opinion that defendant has infringed the plaintiff's rights under Sections 14(a)(iii), 14a(iv), 14(d)(iii) and 14(e)(iii) read with Section 51 of the Copyright Act, 1957.

15. As the plaintiff in his evidence has stated that the defendant had 10,000 subscriptions and the plaintiff used to charge licence fee of Rs.18/- per connection per household per month plus applicable taxes, the plaintiff is held entitled to compensation to the extent of Rs.4,50,000/- (10,000 subscriptions x 2½ months x Rs.18/-).

16. Consequently, present suit is decreed in accordance with prayer (i) of the plaint as well as actual costs incurred by the plaintiff. The costs shall amongst others include the lawyer's fees as well as the amount spent on Court-fees. The plaintiff is also held entitled to compensation of Rs.4,45,000/-. Registry is directed to prepare a decree sheet accordingly.

DECEMBER 19, 2017
mn/js

MANMOHAN, J