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

+ CS(COMM) 37/2015

**SUPER CASSETTES INDUSTRIES
PRIVATE LIMITED**

..... Plaintiff

Through: Mr. K.K. Khetan, Advocate

versus

SHIVAM CABLE NETOWRK

..... Defendant

Through: None.

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Date of Decision: 03rd October, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN, J: (Oral)

1. It is pertinent to mention that present suit has been filed for permanent injunction restraining infringement of copyright, damages and rendition of accounts etc. The prayers made in the plaint are reproduced hereinbelow:-

"39. The Plaintiff prays that this Hon'ble Court may be pleased to grant the following reliefs:

(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 Defendants, 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 to the Plaintiff damages to the tune of Rs.1,00,01,000/- towards past damages and further grant future damages along with pendente lite and future interest at rate of 18% p.a. till the time the decretal amount is paid;

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

AND

Any further orders as this Hon'ble Court deems fit and proper in the facts and circumstance of this case."

2. On 15th December, 2015, 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:-

“I have heard the learned counsel for the plaintiff who was referred various paras of the plaint as well as the documents placed on the record. Prima-facie, it appears that the defendant is engaged in broadcasting/communicating to the public the cinematographic clips of films, recordings, literary and musical works of the plaintiff. I am of the view that the plaintiff has been able to make out a strong prima-facie case for the grant of an ex parte ad-interim injunction. Hence, till the next date of hearing, the defendant is restrained from broadcasting, distributing and communicating to the public the cinematographic films, sound recordings and all related works including the musical works of the plaintiff.

Compliance of Order XXXIX Rule 3 CPC be made within one week. Dasti.”

3. Since defendant did not file any written statement, it was proceeded ex parte vide order dated 19th July, 2018.

4. On 19th July, 2018 the *ex-parte ad-interim* injunction was confirmed till the disposal of the suit.

5. 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**”.

6. 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.

7. Mr. K.K. Khetan, learned counsel for the plaintiff states that the

defendant- Shivam Cable Network is one of the largest ground cable network provider based in Main Bazar, Near Parkash Fancy Emporium, Delhi Road Charkhi Dadri, Haryana and is providing Cable Television services under the logo “SHIVAM MUSIC” to various subscribers having operation in the State of Haryana. He further states that the defendant provides services such as cable advertising, Non Stop Entertainment wherein Hindi songs from commercial films, private albums and film extracts are broadcast extensively and freely.

8. He states that in September, 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, and believing the defendant to be located at Satnali Road Near Bus Stand Badhra, Charkhi Dadri-127308, Haryana, the plaintiff sent a letter dated 25th September, 2015 and a legal notice dated 19th October, 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. He states that subsequent to filing the present suit, the plaintiff was informed by one “Shivamji Cable Network” that they had been wrongly arrayed as a party and the actual defendant i.e. “Shivam Cable Network” is located at Main Bazar, Near Prakash Fancy Emporium, Delhi Road Charkhi Dadri – 127306. He states that owing to the similarity of names and both having offices in Charkhi Dadri, Haryana, the plaintiff was justified in addressing the letter and legal notice to the address of “Shivamji Cable Network” and it did not respond to either letter or legal notice to clarify that it was not the defendant. He states that in view of the

above, the plaintiff sent a letter dated 26th February, 2016 to the defendant, “Shivam Cable Network” at Main Bazar, Near Prakash Fancy Emporium, Delhi Road Charkhi Dadri-127306, requesting it to obtain the requisite public performance license to make its broadcasts legal. He states that despite delivery of the said notice, no response has been received.

9. The plaintiff has filed its evidence by way of two affidavits. One affidavit of PW-1 Mr. S.K. Dutt and another of PW-2 Mr. Vikas Bari.

10. 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 and assignment deeds illustrating that the plaintiff is the exclusive copyright owner of the aforementioned copyrighted works as Ex.PW-1/4 to Ex.PW-1/10 (Colly). The legal notice dated 19th October, 2015 along with the speed post receipt and track report have been proved as Ex.PW-1/11 (Colly). The plaintiff's rate card on its website is proved as Ex.PW-1/12 (Colly). PW-1 in his affidavit has stated *“I say that it is known that the Defendant in the present suit has 40,000 subscriptions as this was alleged in the cease and desist notice dated 19th October 2015, addressed to the Defendant. Since the Defendant chose not to reply to the case and desist notice, an adverse inference regarding the admission of the contents by the Defendant should be drawn as the same have gone unrebutted and uncontroverted by the Defendant...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 three (3) months to the Plaintiff would amount as:*

40,000 (Subscriptions) x 18 (Per month license fee) x 3 (No. of months) = INR 21,60,000/- (twenty One Lakhs Sixty Thousand Only).

I am advised to say that Section 58 of the Copyright Act, 1957,

entitles the Plaintiff to conversion damages which would be the entire cost of the subscription. Therefore, I say that typically, the cost of subscription channel would roughly be several hundred rupees, for example INR 700 per month for Tata Sky, INR 400 per month for Hathway Connections etc. Thus, I am advised to say that if the conversion charges are to be granted by this Hon'ble Court, then the aforesaid figure would approximately rise to $500 \times 40,000 = \text{INR } 2,00,00,000$ (Rupees Three Crores Only)."

11. PW-2 has proved the CD/DVD recordings of the infringing broadcasts made on 10th December, 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 cue sheets of the CD recordings as Ex.PW-2/2 and Ex.PW-2/3 (Colly). Further, screenshots have been exhibited as Ex.PW-2/4 (Colly). PW-2 has also proved letter dated 25th September, 2015, issued by him to the defendant as Ex.PW-2/5 (Colly).

12. Having heard learned counsel for the plaintiff and having perused the 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.

13. A bare perusal of the screenshot of the infringing recording (Ex. PW-2/4) and the cue sheet 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 'Besharmiki height' from the film 'Main Tera Hero', the song 'Soniyo to Badi Soni Lagdi', the song 'Zindgi Aa Raha Hoon Main' from the film 'Zindgi Aa Raha Hoon Main', the song 'Ishqdaari-Ishqdaari' from the film 'I' etc. 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.

14. 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.

15. As the plaintiff in his evidence has stated that the defendant had 40,000 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.21,60,000/- (40,000 subscriptions x 3 months x Rs.18/-).

16. Consequently, present suit is decreed in accordance with para 39 (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.21,60,000/-. Registry is directed to prepare a decree sheet accordingly.

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MANMOHAN, J

OCTOBER03rd, 2018

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