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OSA.Nos.136 to 138 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**OSA.Nos.136 to 138 of 2020
and
CMP.Nos.6492, 6495 and 6501 of 2020**

M/s. Symphony Recording Co.,
Rep. by its Managing Director,
11, Gangappa Street, Saligramam,
Chennai - 93.

.. Appellant in all OSAs

Versus

Dr.K.Shobana

.. Respondent in all OSAs

Common Prayer: Original Side Appeals filed under Order 36, Rule 9 of Original Side Rules read with clause 15 of the Letters Patent read with section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018, to set aside the common order and decretal order dated 04.03.2020 made in O.A.Nos.1090 to 1092 of 2019 in C.S.(Comm.Div) No.687 of 2019 on the file of the High Court (Original Side), Madras and allow the Original Side Appeals.

For Appellant : Mr.M.V.Swaroop in all OSAs
For Respondent : Mr.Arun C.Mohan
for Mrs.DurgaV.Bhatt in all OSAs



COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

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The present Original Side Appeals have been preferred by the appellant/defendant against the common order dated 04.03.2020 passed by the learned Judge in O.A.Nos.1090 to 1092 of 2019 in C.S.(Comm.Div) No.687 of 2019.

2.Briefly stated facts are as follows:

2.1. The respondent / plaintiff is an Indian classical vocalist and she received various awards and titles. In the year 1996, the appellant / defendant approached the respondent and offered her to sing an album named 'Kanda Sashti Kavacham', which was accepted and she sang the album for the appellant at the age of 14 and the album was recorded at 'Sri Recording Studio' located at Kumaran Colony, Vadapalani. On commercial hit of the said album, the appellant again approached the respondent and offered to sing another album consisting of nursery rhymes numbering 33. She agreed with the said offer and sang the album titled as 'Twinkle Twinkle Little Star'. While so, alleging that the defendant has been infringing the copyright of the plaintiff and has been unlawfully enjoying the illegal proceeds, the plaintiff instituted a suit in C.S.No.687 of 2019 seeking the following reliefs:



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"(i) *Permanent injunction restraining the Defendant, its agents, officers, servants, representatives, franchise and all others in any capacity acting for or on behalf of the Defendant from manufacturing, selling, distributing or in any other way infringing the Plaintiff's exclusive right under the Copyright Act to deal in any sound recordings more specifically described in the Schedule A;*

(ii) Permanent injunction restraining the Defendant, its agents, officers, servants, representatives, franchise and all others in any capacity acting for or on behalf of the defendant from entering into or attempting to enter into any agreement with any third party in relation to the sound recordings more specifically described in the Schedule A;

(iii) Permanent injunction restraining the Defendant, its agents, officers, servants, representatives, franchise and all others in any capacity acting for or on behalf of the Defendant from communicating with the plaintiff's dealer, suppliers, or customer in any manner adverse to the plaintiff's reputation and in particular from purporting to question the plaintiff right to exploit the sound recordings more specifically described in the Schedule A;

(iv) Directing the defendants to render account of profits made by use of the said infringing sound recording more specifically described in the Schedule A;

(v) Direct the defendant to pay to the plaintiff a sum of INR.20,00,000/- (Indian Rupees Twenty Lakhs only) as damages for the acts of infringement of copyright under the copyrights Act, 1957 of sound recording in Schedule A; and

(vi) Award cost of the suit and grant such other reliefs as this Hon'ble Court may deem fit and necessary in the circumstances of the case and thereby render justice."

2.2. Apart from the aforesaid suit, the respondent/plaintiff also filed

O.A.Nos.1090 to 1092 of 2019 seeking interim injunctions.

2.3. The learned Judge, by a common order dated 04.03.2020, granted interim injunctions on the ground that the respondent/plaintiff had proved her case through her birth certificate, establishing her to be a minor, at the time of execution of the documents dated 14.12.1995 and 27.04.1996 and it was found that the terms of the documents do not restrict the validity period and hence,



the onus of disproving such statements would be on the appellant/defendant to establish that they have a right to continue to deal with the songs rendered by the respondent/plaintiff. It was further held by the learned Judge that when the defendant themselves claim their rights through these two documents, which are *prima facie* illegal, any further act of the defendant in distributing, manufacturing or selling the songs rendered by the plaintiff, would be impermissible.

2.4. Feeling aggrieved, the defendant is before this court with the present appeals.

3. The main grounds raised by the learned counsel for the appellant are that (i) when the parents of the respondent / plaintiff have countersigned the agreements dated 14.12.1995 and 27.04.1996, which fact has not been denied by the respondent / plaintiff, the learned Judge erred in holding that the agreements are invalid, since the respondent / plaintiff was a minor at the time of signing the same; and (ii) the learned Judge failed to note that under the Copyrights Act, 1957, in respect of a recording in a studio, the singer has no rights whatsoever and the copyrights vest under section 14 only with the music composer, the lyricist and the producer of the sound recording. Therefore, section 19(5) of the Copyrights Act, 1957 has no application to the present case.



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4. On the other hand, the learned counsel for the respondent/plaintiff submitted that there is no validity period mentioned in the two documents authorizing the appellant/defendant for recording and selling the songs and as such, Section 19(5) of the Copyrights Act, 1957, would come into play, which restricts the defendant to exercise their rights over and above 5 years. Even assuming that the agreements have some validity, in view of Section 19(5), the appellant / defendant may not be entitled to deal with the songs rendered by the respondent/plaintiff. It is also submitted that as a performer, the respondent / plaintiff is entitled to rights under Section 38 of the Copyrights Act, 1957 on these two albums, as it stood as on that date; and that, since she was a minor, she could not have granted performance rights to the appellant/defendant. Therefore, the learned Judge rightly ordered the applications in favour of the respondent /plaintiff.

5. Upon hearing both sides and perusal of the records, this court is of the opinion that the issue involved herein requires detailed analysis of the materials produced by the parties and the same has to be decided only after full fledged trial. Therefore, both the parties are directed to raise all the grounds before the court, where the civil suit is pending, in the manner known to law.



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Accordingly, all these Original Side Appeals stand disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
28.03.2023

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