



C.S.No.46 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.S.No.46 of 2015

Symphony Recording Co.,
A partnership firm,
11, Gangappa Street,
Saligramam, Chennai-93.
Rep. By its Partner
Rajesh S.Dhupad

.. Plaintiff

/versus/

1.Mr.Prasad Guduru

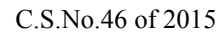
2.Trinadh Pampana

Flat No.303, Sunrise Enclave Balkampet,
S.R. Nagar,
Hyderabad – 500 016.

.. Defendants

Prayer: Civil Suit has been filed under Order VII, Rule 1 of the Code of Civil Procedure, 1908 and Order IV Rule 1 of the Original Side Rules read with Section 62 of the Copyright Act, 1957, praying;

(a) to grant a permanent injunction restraining the defendants from uploading on youtube.com or any other website, the sound recordings belonging to the plaintiff contained in the albums mentioned in Schedule



(b) for a direction to the defendants to remove the albums mentioned in Schedule to this plaint from youtube.com or any other website where they have been uploaded permanently;

(c) to declare that the plaintiff is the legal owner of the copyright in the albums “Sivam”, “Suprabhatam”, “Om Shakti Om”, “Ganapathi Kaaka”, “Solla Solla Inikuthaiyaa”, “Abhishegam”, “Kandha Shashti Kavacham”, “Thirisoolam”, “Arasamarathu Vinayaga”, “Karpooru Nayagiye Mariamma” and “Thiruneeru”;

(d) to direct the defendants to pay to the plaintiff the entire advertising revenue generated from the illegal upload of the albums mentioned in the schedule to this plaint;

(e) to direct the defendants to pay punitive damages to the plaintiff of Rs.10,00,000/- for fraudulently ensuring that the fingerprinted sound recordings of the plaintiff did not get picked up by YouTube resulting in an automatic notification to the plaintiff;

(f) to direct the defendant to pay a sum of Rs.20,000/- towards cost of legal notice dated 09.07.2014; and

(g) to direct the defendants to pay the costs of the suit to the plaintiff.

For Plaintiff : Mr.Rajagopalan
for Mr.M.V.Swaroop

Defendants set exparte



C.S.No.46 of 2015

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J U D G M E N T

The suit has been filed for infringement of copyright in respect of the following sound recordings owned by the plaintiff.

Album	Label
Arasamarathu Vinayaga	Symphony
Sivam	Symphony
Suprabhatam	Symphony
Thiruneer	Symphony
Solla SollaInikuthaya	Symphony
Kandha Sashti Kavacham	Symphony
Thirisulam	Symphony
Karpooranayagiyemariamamma	Symphony
Om Sakthi Om	Symphony
Ganapathy Kaaka	Symphony
Abhishegam	Symphony

2. The plaintiff firm is a music producer and they claim to be the producer of the above mentioned sound recordings. According to the plaintiff, they are the owners of the copyright in respect of the above mentioned sound recordings. According to the plaintiff, the defendants are individuals, who are involved in running two YouTube channels by name “My3music” and “bhakthii”. According to the plaintiff, they discovered on 15.05.2014 that the entire contents of the musical albums



C.S.No.46 of 2015

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of the plaintiff referred to supra were uploaded on YouTube.com by the defendants as “juke box videos” on their channels. The plaintiff states that these videos contain a photograph or a still, accompanied by music from the above albums. According to the plaintiff, each video uploaded has either one song from the album or the entire album itself. The plaintiff has disclosed the URLs, in which the plaintiff's musical albums has been illegally uploaded by the defendants in their respective YouTube channels. The details of the URLs, where the plaintiff's copyright has been infringed, are disclosed in the plaint and are reproduced hereunder:-

<i>Album</i>	<i>Channel</i>	<i>URL-Link</i>	<i>Owner</i>
Arasamarathu Vinayaga	Bhakthii	http://www.youtube.com/watch?v=ou5xl.Zdq8_o	Symphony
Sivam	Bhakthii	http://www.youtube.com/watch?v=A9_N8H41res	Symphony
Suprabhatam	Bhakthii	http://www.youtube.com/watch?v=wwNJIXquby Y	Symphony
Thiruneer	Bhakthii	http://www.youtube.com/watch?v=rbwJ6JG718&li	Symphony
Solla SollaInikutha yya	Bhakthii	http://www.youtube.com/watch?v=2nm-69VyNpU	Symphony



C.S.No.46 of 2015

<i>Album</i>	<i>Channel</i>	<i>URL-Link</i>	<i>Owner</i>
Kandha Sashti Kavacham	Bhakthii	https://www.youtube.com/watch?v=IjVivijUISg&list=UUQIh660XHM2YKMFHrw614A	Symphony
Thirisulam	my3	http://www.youtube.com/watch?v=KSqidrugOg	Symphony
Karpooranaya giyemariam a	my3	http://www.youtube.com/watch?v=OuD130vV6Ww	Symphony
Om Shakti Om	my3	http://www.youtube.com/watch?v=xSKyIF4p0-g	Symphony
Ganapathy Kaaka	my3	http://www.youtube.com/watch?v=Cy0Ng4Jm7	Symphony
Abhishegam	my3	http://www.youtube.com/watch?v=ianKDECgyHU	Symphony

3. According to the plaintiff, uploading of the above sound recordings is a clear violation of the copyright of the plaintiff firm. According to them, they alone have the sole right to communicate its works with regard to its musical albums to the public. They have also claimed that they have not assigned the right to upload the albums on YouTube or any other website to any third party. According to the plaintiff, they being a premium member of YouTube, their entire



C.S.No.46 of 2015

notice dated 26.06.2014 and only the second defendant sent a reply on 09.07.2014 through his advocate, stating that the plaintiff did not have any copyright to the albums in question, and that the second defendant had procured the rights to these albums from the original owners of the same. Since the defendants continued to infringe the copyright of the plaintiff, the plaintiff has filed this suit.

8. The defendants have already been set exparte by this Court on 01.12.2023. Though the defendants have been served with suit summons in the year 2015 itself, till date, no application has been filed to set aside the exparte interim injunction granted by this Court on 22.01.2015.

9. The plaintiff has also recorded its oral and documentary evidence before the Additional Master-IV. A proof affidavit was also filed by Mr.Rajesh S.Dhupad, partner of the plaintiff, reiterating the contents of the plaint, and he was examined as PW1. Through PW1, the following documents were marked as exhibits on the side of the plaintiff.

<i>Exhibits</i>	<i>Nature of documents</i>
Ex.P1	11 numbers (series) are the original covers of CDs/Cassettes evidencing the ownership of the albums by the plaintiff



C.S.No.46 of 2015

<i>Exhibits</i>	<i>Nature of documents</i>
Ex.P2	Office copy of the legal notices sent by the plaintiff's counsel and the second defendant dated 26.06.2014
Ex.P3	Original reply to legal notices by the second defendant dated 09.07.2014 along with cover
Ex.P4	Infringement notices sent by the plaintiff to the defendants via Youtube.com dated 15.05.2014
Ex.P5	Counter-notifications sent by the defendants to the plaintiff dated 23.05.2014

10. The learned counsel for the plaintiff also drew the attention of this Court to Section 55(2) of the Copyright Act, 1957, and would submit that in case of musical work, as in the present case, if a name purporting to be that of the author appears on copies of the work as published , it is presumed that the name disclosed is that of the author of the copyright. He drew the attention of this Court to Ex.P1, which are the original covers of CDs/Cassettes pertaining to the plaintiff's musical works, wherein the name of the plaintiff is disclosed and therefore, applying Section 55(2) of the Copyright Act, it is presumed that the plaintiff is the author of the copyright for the said musical albums. He would submit that no contra evidence has been produced by the defendants to presume that the plaintiff is not the owner of the copyright. He also drew the attention of this Court to other exhibits marked on the side of the plaintiff



C.S.No.46 of 2015

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and would submit that despite issuing a legal notice calling upon the defendants not to infringe the plaintiff's copyright along with the musical albums, the defendants are continuing to infringe the plaintiff's copyright by broadcasting in their respective YouTube channels illegally the music albums of the plaintiff.

11. He also drew the attention of this Court to the reply dated 09.07.2014 sent by the second defendant, which has been marked as Ex.P3, and would submit that eventhough the second defendant is disputing the plaintiff's claim, they have sent a vague reply without giving any particulars with regard to the name of the third party from whom the second defendant has acquired the rights.

12. This Court, after giving due consideration to the contents of the plaint, wherein the plaintiff has revealed its credentials as a producer of the musical albums referred to supra, and after giving due consideration to the covers of CDs/Cassettes evidencing the ownership of the albums by the plaintiff, which has been marked as Ex.P1, which is also supported by Section 55(2) of the Copyright Act as discussed supra, is of



C.S.No.46 of 2015

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the considered view that the plaintiff is the owner of the copyright over the musical albums, which are the subject matter of this suit. The plaintiff has also sent an infringement notice to the defendants via YouTube.com on 15.05.2014 with regard to infringement committed by the defendants, which has been marked as Ex.P4. A similar counter-notification has also been sent by the defendants to the plaintiff on 23.05.2014, which has been marked as Ex.P5. Despite a legal notification dated 26.06.2014 sent by the plaintiff calling upon the defendants to stop infringing the plaintiff's copyright, which has been marked as Ex.P2, the plaintiff contends that the defendants are continuing to infringe the plaintiff's copyright. Though the first defendant has received the legal notice dated 26.06.2014 sent by the plaintiff, the first defendant has chosen not to send any reply, and only the second defendant sent a reply dated 09.07.2014 stating that from a third party, they have acquired rights in respect of musical albums, which are the subject matter of the suit. However, the second defendant has not disclosed the name of the third party, from whom, they have acquired the rights.



C.S.No.46 of 2015

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13. Since the defendants have been set exparte and the suit is of the year 2015 and till date no application has also been filed by the defendants to set aside the exparte interim injunction granted by this Court on 22.01.2015, it is presumed that the defendants do not have any contra evidence with regard to the plaintiff's claim. As seen from Section 55(2) of the Copyright Act, 1957, there is a presumption about the ownership of the copyright, if a name purporting to be that of the author appears on copies of the work as published, when there is no contra evidence produced to disprove the same. Section 55(2) of the Copyright Act is reproduced hereunder:-

“55. Civil remedies for infringement of copyright.

(2) Where, in the case of a literary, dramatic, musical or artistic work, or, subject to the provisions of sub-section (3) of section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears on copies of the work published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of



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C.S.No.46 of 2015

copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.”

14. In the instant case, Ex.P1 are the CD covers, which discloses the name of the plaintiff as the author of the copyright in respect of the musical albums referred to supra. Therefore, this Court has to presume that the plaintiff is the owner of the copyright in respect of the musical albums, which are the subject matter of the suit, as no contra evidence is available on record to disprove the claim of the plaintiff.

15. For the foregoing reasons, the suit claim has been proved and therefore, the suit is partly decreed by granting the following reliefs:-

(a) Permanent injunction is granted by restraining the defendants from uploading on YouTube.com or any other websites the sound recordings belonging to the plaintiff contained in the musical albums referred to supra.

(b) The defendants are directed to remove the albums mentioned in the Schedule to this plaint from YouTube.com or any other website where they have uploaded permanently.



C.S.No.46 of 2015

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(c) It is declared that the plaintiff is the legal owner of the copyright in respect of the musical albums referred to supra.

(d) Insofar as prayer (d), (e) & (f) sought for in the plaint is concerned, the learned counsel for the plaintiff, on instructions, is not pressing the same, and to that effect, he has also made an endorsement in the Court bundle. Therefore, the suit reliefs (d), (e) & (f) are dismissed as not pressed.

(e) However, the defendants are directed to pay the costs of the suit to the plaintiff.

22.02.2024

rkm

Index:yes/no

Speaking/non-speaking

Neural citation: yes/no



C.S.No.46 of 2015

Plaintiff's witness:

Mr.Rajesh S.Dhupad - PW1

Documents exhibited by the Plaintiff:

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C.S.No.46 of 2015

ABDUL QUDDHOSE, J.

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C.S.No.46 of 2015

22.02.2024