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C.S.No.380 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.380 of 2017

1.SPI Music Private Limited,
New No.25, Old No.13,
Mamatha Complex, 5th Floor,
Whites Road, Royapettah,
Chennai - 600 014,
Represented by its
Director, Santhoshkumar D.

2.Punya Srinivas,
Sole Proprietor, The One,
No.12/14F, 1, PJP Homes,
Vlunuswamy Street, Saligramam,
Chennai - 600 093.

....Plaintiffs

Vs.

Kancheepuram S.M.Silks,
146, Gandhi Road,
Kancheepuram 631 502,
and also at Old No.657, New No.616,
Poonamallee High Road,
Aminjikarai,
Chennai - 600 029.

... Defendant

PRAYER: Complaint filed under Order IV Rule 1 of Madras High Court
Original Side Rules and Order VII Rule 1 of C.P.C. read with Sections 51,



55 and 62 of the Copyright Act, 1957 for the following reliefs:

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i) Permanent injunction restraining the Defendant, by themselves, their employees, servants, representatives, agents or anyone acting on their behalf from using, adapting, reproducing, broadcasting or otherwise publishing or in any manner exploiting the Works, "Veena in Vienna" or any sound recordings or part thereof incorporated in the said "Veena in Vienna" including the music tracks "Global Gear" and "On Cloud Nine", or doing any other act that would lead to infringement of copyright of the Plaintiffs in the said Works;

ii) Directing the defendant to surrender to the Plaintiffs for destruction, all compact discs, video discs, all digital works including master copy, advertising materials etc., which includes the Works, "Veena in Vienna" as a sound recording or in any other manner whatsoever;

iii) Directing the Defendant to deliver to the Plaintiffs a true and faithful statement of accounts indicating the sales and profits already earned by the Defendant from the date of infringement of Plaintiffs' copyright and upon such enquiry to pay such profits earned by the Defendant as may be found to be due and payable to the Plaintiff No. 1 on such account being taken;

iv) Directing the Defendant to pay damages to pay the Plaintiff No. 1 the tune of Rs. 1,00,000 as and by way of damages for infringement of Plaintiffs' copyright;



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v) Directing the defendant to pay the plaintiffs the cost of the suit.

For Plaintiffs : Mr.Edward James

JUDGMENT

This suit has been filed for infringement of copyright and for damages.

2. The plaintiff No.1 is a part of SPI group and they claim that they are a leading player in the entertainment industry offering distribution and production services of music throughout the Country. The plaintiff No.2 claims to be a renowned vainika and vocalist. She claims that she was proclaimed as A-grade artist by All India Radio at an young age and has been performing in major sabhas in Chennai and various places in India and abroad. She claims that she has released more than 5,000 recordings as a veena player. In the year 2011, the plaintiff No.2 created the music album viz., "Veena in Vienna", *"Hereinafter referred to as the **Works**"*. The plaintiff No.2 granted an exclusive license to plaintiff No.1 to commercially exploit the works and all Intellectual Property rights therein, including all



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copyrights under Section 14 of the Copyright Act, 1957, including but not limited to performing, publishing, distributing, adapting, translating, etc., and otherwise exploiting the works.

3. A music rights license agreement dated 01.12.2011 was entered into between the plaintiff No.2 and plaintiff No.1. According to the plaintiff No.1, upon the grant of license by the plaintiff No.2, they spent considerable amount of money in marketing, promoting, and supporting the music works to be heard and noticed. According to the plaintiffs, the works have given a different dimension to the instrument Veena and the works have made a global hit.

4. Under the music rights license agreement referred to supra, the plaintiff No.1 has been provided with an irrevocable license to commercially exploit the works along with all intellectual property rights therein including all copyrights. According to the plaintiff No.1, they have regularly paid the plaintiff No.2, 60% of the net profits as rent, license fee and consideration towards exclusive license as per the terms and conditions of the music rights license agreement dated 01.12.2011.



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5. According to the plaintiff No.1, the license granted by the plaintiff No.2 has been periodically extended and is valid till date. According to the plaintiffs, due to extensive and substantive reproduction of the musical work by the plaintiff No.1 in theatres, advertisements and television channels, the general public identifies the works only with the the plaintiff No.1. According to the plaintiffs, in November, 2015, they came across advertisements / commercials, being broadcasted on television channels by the defendant, which were unauthorizedly using, adapting and publishing the music track "Global Gear" which forms part of the work, in the defendant's commercials without any authority, consent or permission from the plaintiffs.

6. By an e-mail dated 25.11.2015, the plaintiff No.1 called upon the defendant to forthwith cease and desist from infringing the works. According to the plaintiffs, despite the cease and desist notice dated 25.11.2015, the defendant continued using, adapting and publishing the works of the plaintiffs in an unauthorized manner. Therefore, the plaintiffs claim that they were constrained to issue a legal notice dated 25.01.2016



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calling upon the defendant to immediately discontinue the unauthorized use of publishing, adaption and reproduction of the plaintiffs' works. According to the plaintiffs, no reply was received to the legal notice dated 25.01.2016 sent by them through their lawyers. According to the plaintiffs, for a short while after the cease and desist notice was sent, the defendant stopped exhibiting, publishing or reproducing the plaintiffs' works. However, according to the plaintiffs, after some time, to their shock and surprise, the defendant once again re-started the illegal works in its commercials / advertisements without getting the consent of the plaintiffs and unauthorizedly from March, 2017 onwards.

7. According to the plaintiffs, the defendant has infringed the copyright of the plaintiffs in respect of the works. According to the plaintiffs, to their knowledge, the defendant was broadcasting the plaintiffs' works in television channels more particularly in Sun TV and Thanthi TV. According to the plaintiffs, during the entire length of the advertisements / commercials, the works of the plaintiffs are being used as the music / sound recording for the advertisements / commercials.

8. According to the plaintiffs, the defendant has also started using



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another music track, whose copyright is also vested with the plaintiffs, which also forms part of the work, in the defendant's commercials / advertisements without any authority, consent or permission from the plaintiffs.

9. In the month of November, 2015, the plaintiffs came across the commercial advertisement of the defendant being broadcasted on television channels by unauthorizedly using, adapting and publishing the music track "Global Gear" which forms part of the works in the defendant's commercials without any authority, consent or permission from the plaintiffs. According to the plaintiffs, the defendant also started using another music track "On Cloud Nine" which also forms part of the works in the defendant's commercials / advertisements without any authority, consent or permission from the plaintiffs. According to the plaintiffs, the infringement is in the form of advertisements in various television channels like, Sun TV and Thanthi TV, having video length of about 19 seconds. The plaintiff No.1 also claims that they are paying valuable consideration to the plaintiff No.2 towards exclusive license of the works. The plaintiffs have also categorically averred in the plaint that at no point of time, they have condoned or



acquiesced to the unlawful activity of the defendant.

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10. According to the plaintiffs, the defendant is also liable to pay the plaintiff No.1 all profits it has earned from the unauthorized use, adaptation and publication of the works and they are liable to pay damages to the plaintiff No.1 for infringing the copyright of the plaintiffs and for riding over the goodwill and reputation of the plaintiff No.1. Under the aforementioned circumstances, the plaintiffs have filed the suit seeking for the following reliefs:

a) Permanent injunction restraining the Defendant, by themselves, their employees, servants, representatives, agents or anyone acting on their behalf from using, adapting, reproducing, broadcasting or otherwise publishing or in any manner exploiting the Works, "Veena in Vienna" or any sound recordings or part thereof incorporated in the said "Veena in Vienna" including the music tracks "Global Gear" and "On Cloud Nine", or doing any other act that would lead to infringement of copyright of the Plaintiffs in the said Works;

b) Directing the defendant to surrender to the Plaintiffs for destruction, all compact discs, video discs, all digital works including master



copy, advertising materials etc., which includes the Works, "Veena in Vienna" as a sound recording or in any other manner whatsoever;

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c) Directing the Defendant to deliver to the Plaintiffs a true and faithful statement of accounts indicating the sales and profits already earned by the Defendant from the date of infringement of Plaintiffs' copyright and upon such enquiry to pay such profits earned by the Defendant as may be found to be due and payable to the Plaintiff No. 1 on such account being taken;

d) Directing the Defendant to pay damages to pay the Plaintiff No. 1 the tune of Rs. 1,00,000 as and by way of damages for infringement of Plaintiffs' copyright.

11. The suit summons was served on the defendant. They had entered appearance through a learned counsel. The defendant has also filed its written statement before this Court. They have also filed the affidavit of admission / denial of documents.

12. Before the learned Additional Master - IV, the following documents were marked as exhibits on the side of the plaintiffs by consent:

"Ex.P1 is the original of the Music Rights License Agreement. Dated on 01.12.2011.



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Ex.P2 is the original of the Music Rights License Agreement (Extension of term) dated on 02.12.2014.

Ex.P3 is the Copy of the printout of E-mail from plaintiff No.1 to Defendant dated 25.11.2015.

Ex.P4 is the photocopy of the Legal Notice dated January 25,2016 issued on behalf of the Plaintiffs dated 25.01.2016.

Ex P5 is the Copy of the printout of various websites wherein the works are available for sale from 2011-2017.

Ex.P6 is the Copy of the printout of various reviews of the Works that are publicly available from 2011-2017.

Ex.P7 is the copy of the CD//MP3 player containing the Works.

Ex.P8 is the copy of the VCD/MP4 player containing the advertisement of the Respondent.

Ex.P9 is the office copy of the letter written by the plaintiff to the television channel dated 04.08.2017.



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Ex.P10 is the original of the revenue statement dated 23.12.2021.

Ex.P11 is the original sample license agreement dated 01.04.2021."

The documents were marked as exhibits on the side of the plaintiffs in the presence of the learned counsel for the defendant.

13. Similarly, the following documents were marked as exhibits on the side of the defendant in the presence of the learned counsel for the plaintiffs:

"Ex.D1 is the printout of the invoice issued by M/s Verve Media creations Pvt. Ltd vide invoice no.15 dated 05.08.2016 (The Learned counsel for the plaintiff objected that it is a 3rd party document it is not relevant to this case and 65B affidavit filed only today)

Ex.D2 is the printout of the Email communication between Verve Media Creations Pvt Ltd to the defendant dated 03.07.2018 (The Learned counsel for the plaintiff objected that it is a 3rd party document it is



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not relevant to this case and 65B affidavit filed only today)

Ex.D3 is the printout of web page of M/s Verve Media Creations Pvt Ltd (The Learned counsel for the plaintiff objected that it is a 3^a party document it is not relevant to this case and 65B affidavit filed only today).

Ex.D4 is the photocopy of the accounts statement of the defendant for the period 09.05.2015 to 27.12.2016 (The Learned counsel for the plaintiff objected that in the 65B affidavit the Manager of Defendant who has been authorized, but no authorization is filed, In 65B affidavit there is no details about device and printer which has been used by the company had not given. The documents is signed by Manager but the seal affixed is of the managing partner of the defendant)

Ex.D5 is 65B affidavit."

14. Both the parties have not let in any oral evidence.



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15. The defendant has been set *ex-parte* by this Court on 30.11.2023, as neither their counsel nor the defendant made their appearance on several hearing dates.

16. In the written statement filed by the defendant, they admit their mistake in airing / broadcasting the plaintiffs' musical track though they would submit that inadvertently on account of the freelancer engaged by them, they aired and broadcasted the musical track belonging to the plaintiffs. According to them, without their knowledge, the musical track of the plaintiffs was aired / broadcasted without obtaining the consent of the plaintiffs. According to the defendant, they are an honest business enterprise and that they were shocked to receive the suit summons pertaining to instant suit filed by the plaintiffs.

17. The defendant in their written statement has also stated that the first usage of the creative works of the plaintiffs was stopped upon the legal notice issued to them. It is also their contention that the advertisements made by the defendant using the plaintiffs' musical track would not have impacted the general public to enable the defendant to get more sales for their



products. The defendant also claims that the plaintiffs have not established that they had suffered loss on account of the airing / broadcasting of the plaintiffs' musical work without the authority of the plaintiffs.

18. Based on the pleadings of the respective parties, the following issues were framed by this Court on 28.06.2022:

- "1. Whether the defendant infringed the plaintiffs' copyright in the work "Veena in Vienna" or the sound recordings incorporated therein?*
- 2. Whether the plaintiffs are entitled to a permanent injunction as prayed for?*
- 3. Whether the plaintiffs are entitled to damages of Rs.1,00,000/- in respect of the alleged infringement?*
- 4. Whether the first plaintiff is entitled to compensatory costs?*
- 5. Whether the plaintiffs are entitled to any other relief?"*



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19. The defendant having admitted the infringement of the copyright of the plaintiffs' works, this Court will have to necessarily grant the relief of permanent injunction as prayed for in the plaint. The learned counsel for the plaintiffs, is not satisfied with the relief of permanent injunction alone as sought for in the plaint, but, he is also pressing for the award of damages as claimed in the plaint as well as for award of costs. He would highlight the irresponsible and contumacious conduct of the defendant and would submit that considering their improper conduct, this Court will have to award compensatory costs under Section 35A of the Code of Civil Procedure as applicable to Commercial Courts Act in addition to the damages claimed in the plaint at Rs.1,00,000/-.

20. The learned counsel for the plaintiffs, to establish the improper conduct of the defendant would draw the attention of this Court to the following facts:

a) Despite receipt of the cease and desist notice sent by the plaintiffs on 25.11.2015, the defendant after stopping airing / broadcasting the advertisements containing the works of the plaintiffs for a short while, once



again continued to use the plaintiffs' works in the advertisements, aired in television channels;

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b) The defendant entered appearance in this suit through a learned counsel. They have filed their written statement, admitting their guilt of airing / broadcasting the plaintiffs' works in their advertisements;

c) The defendant claims that they engaged a freelancer for the purpose of making advertisements in television channels, who, according to the defendant, has utilized the plaintiffs works without the authorisation of the plaintiffs in the advertisements without the knowledge of the defendant. The name of the freelancer, whom the defendant had engaged for airing / broadcasting advertisements, is not deliberately disclosed in the written statement;

d) No Royalty amount has been paid to the plaintiffs by the defendant, despite admitting in the written statement that the plaintiffs' works were utilized by the defendant in their advertisements for marketing their products;

e) Despite the cease and desist notice issued by the plaintiffs to the defendant, the defendant continued to use the works of the plaintiffs in its advertisements for promoting their products. The plaintiffs were, therefore,



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constrained to send a cease and desists notice to the television channels as well. After filing of the present suit and after sending notice to television channels, the plaintiffs' works were not aired / broadcasted in the television channels at the behest of the defendant;

f) According to the plaintiffs, despite the receipt of an order of interim injunction from this Court, the defendant continued to air / broadcast the plaintiffs' works in their advertisements for promoting their products;

g) After filing the written statement, the dispute was referred to Meditation. The defendant failed to appear before the Mediation, despite the fact that a request was made only by them to go for mediation;

h) It is also orally informed to the learned counsel for the plaintiffs by the learned counsel for the defendant that the defendant was willing to pay Rs.1,00,000/- towards full and final settlement of the suit claim by way of compensation and even that amount was not paid.

21. The learned counsel for the plaintiffs also drew the attention of this Court to the following judgments in support of his contention that this Court is empowered to award compensatory costs under Section 35A of the Code of Civil Procedure as applicable to Commercial Courts Act, 2015. He



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would also submit that the compensatory cost to be awarded by this Court need not be proportionate to the damage claim of Rs.1,00,000/- made by the plaintiffs in the suit. He would submit that the improper conduct of the defendant will enable this Court to award a higher sum as compensatory cost despite the fact that the plaintiffs have claimed only a sum of Rs.1,00,000/- as damages from the defendant:

a) A decision of the Honourable Supreme Court in the case of ***Vinod Seth Vs. Devinder Bajaj and Ors.*** reported in ***2010 (8) SCC 1***;

Relying upon the said decision, the learned counsel for the plaintiffs would submit that the Honourable Supreme Court had expressed the need for reform with regard to Section 35A of the Code of Civil Procedure which deals with compensatory costs and would submit that the Honourable Supreme Court prior to the amendment made to Section 35A of the Code of Civil Procedure felt the need for reform for imposition of higher compensatory cost due to the mushrooming growth of vexatious, frivolous and speculative civil litigations. He drew the attention of this Court to paragraph No.22 of the said decision which highlighted the object of the imposition of compensatory costs. In paragraph No.26 of the said decision,



the Honourable Supreme Court has expressed that there should be a realistic revision of the maximum compensatory cost that can be awarded under Section 35A of the Code of Civil Procedure which was earlier fixed at a ceiling limit of Rs.3,000/- prior to the amendment to Section 35A of the Code of Civil Procedure.

b) A decision of the Honourable Supreme Court in the case of ***Uflex Limited Vs. Government of Tamil Nadu and Others*** reported in ***2022 (1) SCC 165***;

Relying upon the aforesaid decision, the learned counsel for the plaintiffs would submit that the salutary principle for imposing cost are as follows:

- i) Costs should ordinarily follow the event;
- ii) Realistic costs ought to be awarded keeping in view the ever-increasing litigation expenses; and
- iii) The costs should serve the purpose of curbing frivolous and vexatious litigation.



c) Decision of a learned Single Judge of this Court in the case of

A.D.Padmasingh Isaac Trading as Aachi Spices and Foods and Others

Vs. Aachi Mess reported in ***2019 SCC Online Mad 29622***;

Relying upon the aforesaid decision, the learned counsel for the plaintiffs would submit that after giving due consideration to the improper conduct of the defendant during the course of the proceedings, this Court had awarded a compensatory cost of Rs.5,00,000/- to the plaintiffs under Section 35A of the Code of Civil Procedure. The learned counsel for the plaintiffs would therefore submit that the suit claim has to be decreed as prayed for and a compensatory cost of Rs.10,00,000/- will have to be awarded in favour of the plaintiffs due to the improper and illegal conduct of the defendant both prior to the suit and after filing of the suit.

Discussion:

22. The defendant has already been set *ex-parte* by this Court on 30.11.2023. Till date, no application has been filed by the defendant to set aside the *ex-parte* order. It was also informed by the learned counsel for the plaintiffs during the course of his arguments that the learned counsel for the



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defendant had orally informed him, prior to the date when the defendant was set *ex-parte*, that the defendant is willing to pay the plaintiffs a sum of Rs.1,00,000/- towards full and final settlement of the suit claim, which was not agreeable to the plaintiffs considering the improper and contumacious conduct of the defendant.

23. As seen from the written statement, the defendant themselves have admitted the infringement of copyright of the plaintiffs' works. Secondly, the first plaintiff is the licensee and the second plaintiff, a leading Veena Player, is vested with the copyright over the works which were utilized by the defendant in their advertisements in the television channels without the authorization of the plaintiffs. The music rights license agreement dated 01.12.2011 entered into between the second plaintiff and the first plaintiff proves that the second plaintiff is the author of the copyright in respect of the works which is the subject matter of the dispute. The second plaintiff has granted license to use her works to the first plaintiff under the music rights license agreement which has been marked as Ex.P1. Ex.P2 is the extension of the music rights license agreement dated 01.12.2011, which is dated 02.12.2014. The plaintiff No.1 has also sent the cease and desist notice to



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the defendant on 25.11.2015 which has been marked as Ex.P3. Since the defendant continued to use the plaintiffs' works, the plaintiffs through their lawyers had to send another cease and desist notice dated 25.01.2016 which has been marked as Ex.P4. The plaintiffs have also filed copy of printout of various websites wherein the plaintiffs' works were available for sale from 2011-17 and the same has been marked as Ex.P5. Ex.P6 is the copy of the printout of various reviews of the plaintiffs' works that were publicly available for sale from 2011-2017. Ex.P7 is the copy of the CD / MP3 player containing the works of the plaintiffs. Ex.P8 is the copy of the VCD / MP4 player containing the advertisement of the respondent. Exs.P7 and P8 were marked as exhibits subject to its proof and relevancy. Ex.P9 is the office copy of the plaintiffs' letter to the television channel dated 04.08.2017. Ex.P10 is the revenue statement of the plaintiff dated 23.12.2021 in respect of the works of the second defendant. Ex.P11 is the sample license agreement dated 01.04.2021 which is normally entered into for the benefit of the author of the contract. Since the defendant has been set *ex-parte*, the exhibits marked on their side does not require any consideration by this Court.



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24. As rightly pointed out by the learned counsel for the plaintiffs, the conduct of the defendant, prior to the suit as well as subsequent to the filing of the suit, is improper and contumacious and has to be deprecated. The improper and contumacious conduct of the defendant is noticed by this Court from the following:

a) Despite receipt of the cease and desist notice sent by the plaintiffs on 25.11.2015, the defendant had stopped airing / broadcasting the advertisements containing the works of the plaintiffs for a short while, but subsequently continued to use the plaintiffs' works in the advertisements, aired in television channels;

b) The defendant entered appearance in this suit through a learned counsel. They have filed their written statement, admitting their guilt of airing / broadcasting the plaintiffs' works in their advertisements;

c) The defendant claims that they engaged a freelancer for the purpose of making advertisements in television channels, who, according to the defendant, has utilized the plaintiffs works without the authorisation of the plaintiffs in the advertisements without the knowledge of the defendant. The name of the freelancer, whom the defendant had engaged for airing /



broadcasting advertisements, is not deliberately disclosed in the written statement;

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d) No Royalty amount has been paid to the plaintiffs by the defendant, despite admitting in the written statement that the plaintiffs' works were utilized by the defendant in their advertisements for marketing their products;

e) Despite the cease and desist notice issued by the plaintiffs to the defendant, the defendant continued to use the works of the plaintiffs in its advertisements for promoting their products. The plaintiffs were, therefore, constrained to send the cease and desists notice to the television channels as well. After filing of the present suit and after sending notice to television channels, the plaintiffs' works were not aired / broadcasted in the television channels at the behest of the defendant;

f) According to the defendant, despite the receipt of an order of interim injunction from this Court, the defendant continued to air / broadcast the plaintiffs' works in their advertisements for promoting their products;

g) After filing the written statement, the dispute was referred to Mediation. The defendant failed to appear before the Mediation, despite the fact that a request was made only by them to go for mediation;



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h) It is also orally informed to the learned counsel for the plaintiffs by the learned counsel for the defendant that the defendant was willing to pay Rs.1,00,000/- towards full and final settlement of the suit claim by way of compensation.

25. The Honourable Supreme Court in the decision rendered in ***Vinod Seth Vs. Devinder Bajaj and Ors.*** reported in ***2010 (8) SCC 1*** has highlighted the necessity for imposing realistic compensatory cost in case of vexatious, frivolous and a speculative civil litigation. The relevant paragraphs of the Honourable Supreme Court in the said decision is extracted hereunder:

"22. Before concluding, it is necessary to notice the reason why the High Court was trying to find some way to protect the interests of defendants, when it felt that they were being harassed by plaintiff. It made the impugned order because it felt that in the absence of stringent and effective provision for costs, on the dismissal of the suit, it would not be able to compensate the defendants for the losses/hardship suffered by them, by imposing costs. If there was an effective provision for levy of realistic costs against the losing party, with reference to the conduct of such party, the High Court,



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in all probability would not have ventured upon the procedure it adopted. This draws attention to the absence of an effective provision for costs which has led to mushrooming of vexatious, frivolous and speculative civil litigation."

26. As seen from the aforesaid observation, the object of imposing compensatory cost under Section 35A of the Code of Civil Procedure is to act as a deterrent to vexatious, frivolous and speculative litigations / defences. Earlier, prior to the amendment of Section 35A of the Code of Civil Procedure, ceiling limit for imposing of compensatory cost was fixed at Rs.3,000/- but the said ceiling limit has now been removed subsequent to the amendment to Section 35A of the Code of Civil Procedure.

27. The Honourable Supreme Court in the case of ***Uflex Limited Vs. Government of Tamil Nadu and Others*** reported in ***2022 (1) SCC 165*** also makes it clear that the solitary principle for compensatory cost as:

- i) Costs should ordinarily follow the event;
- ii) Realistic costs ought to be awarded keeping in view the ever-increasing litigation expenses; and



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iii) The costs should serve the purpose of curbing frivolous and vexatious litigation.

28. In the decision rendered by a learned Single Judge of this Court in the case of ***A.D.Padmasingh Isaac Trading as Aachi Spices and Foods and Others Vs. Aachi Mess*** reported in ***2019 SCC Online Mad 29622***, after giving due consideration to the improper conduct of the defendant in the suit, has awarded a compensatory cost of Rs.5,00,000/- under Section 35A of the Code of Civil Procedure.

29. In the instant case, as observed supra, despite the cease and desist notice sent by the plaintiffs, the defendant has been infringing the copyright of the plaintiffs by using the plaintiffs' works in their advertisements for marketing their products. The plaintiffs were also constrained to issue notice to the television channels which were airing / broadcasting the plaintiffs' works, calling upon them not to air / broadcast the plaintiffs' works without their permission. The defendant has also admitted in the written statement to its guilt in airing / broadcasting the plaintiffs' works without the permission of the plaintiffs. The defendant has also not disclosed the name of the



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freelancer whom they have engaged, who, according to the defendant, has used the plaintiffs' works without the plaintiffs' permission in the advertisements of the defendants for marketing their products.

30. The submission made by the learned counsel for the plaintiffs that deliberately the name of the freelancer has not been disclosed by the defendant is believable. This Court has also taken note of the submission made by the learned counsel for the plaintiffs that the defendant's counsel orally had informed him that the defendant is willing to pay a sum of Rs.1,00,000/- as compensation towards full and final settlement of the suit claim. This Court, after taking note of the said submission, infact had directed the learned counsel for the plaintiffs to serve one more notice on the defendant's counsel intimating the next date of hearing in order to arrive at an amicable settlement between the parties. As directed by this Court, the learned counsel for the plaintiffs had also sent a communication to the defendant's counsel on 11.12.2023 intimating the next date of hearing. The same was also duly acknowledge by the defendant's counsel. But, despite the same, the defendant has chosen not to defend the suit nor they have come forward to settle the claim of the plaintiffs amicably.



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31. The object of imposing cost as held by the Honourable Supreme Court is as follows:

" a) It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence.

b) Costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court.

c) Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs.

d) The provision for costs should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases. In many other jurisdictions, in view of the existence of appropriate and adequate provision for costs, the litigants are persuaded to settle nearly 90% of the civil suits before they come up to trial.



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e) The provisions relating to costs should not however obstruct access to courts and justice. Under no circumstances the costs should be a deterrent, to a citizen with a genuine or bonafide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts. "

32. Here is a classic case, where this Court is of the considered view that compensatory cost at a higher sum will have to be awarded in favour of the plaintiffs under Section 35A of the Code of Civil Procedure for the following reasons:

- a) Improper and contumacious conduct of the defendant as highlighted supra;
- b) The defendant is a reputed player in the textile market;
- c) The defendant cannot be allowed to go scot-free by payment of nominal cost, considering the loss that the plaintiffs would have suffered, the loss may include revenue loss as well as loss to their reputation in the market;
- d) The plaintiffs have been fighting this litigation for the past seven years despite the fact that the defendant in its written statement has admitted



to its guilt but has not given the reason as to why they continued to air / broadcast the plaintiffs' works despite the cease and desist notice sent by the plaintiffs;

e) The defendant has chosen not to defend the suit despite having filed the written statement and despite having instructed their counsel to give an offer of settlement to the plaintiffs' counsel.

f) The defendant has also chosen not to appear in the suit despite the fact that one more notice for their appearance was sent to them.

33. After giving due consideration to the aforementioned factors, this Court is of the considered view that the plaintiffs are not only entitled for damages as claimed in the plaint but is also entitled for compensatory cost. The plaintiffs have claimed a sum of Rs.1,00,000/- as damages from the defendant and after giving due consideration to the improper and contumacious conduct of the defendant both before the filing of the suit and subsequently, this Court fixes the compensatory cost payable to the plaintiffs at Rs.4,00,000/- though a sum of Rs.10,00,000/- has been claimed by the learned counsel for the plaintiffs during the course of his submissions.



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34. This Court is also of the considered view that the compensatory cost to be awarded is not dependent upon the quantum of damages claimed by the plaintiffs in the suit. The award of compensatory cost depends upon the facts and circumstances of each case and it depends on the conduct of the defendant before filing of the suit and after filing of the suit as well.

35. For the foregoing reasons, the suit is decreed in favour of the plaintiffs against the defendant by granting the following reliefs:

a) Permanent injunction restraining the Defendant, by themselves, their employees, servants, representatives, agents or anyone acting on their behalf from using, adapting, reproducing, broadcasting or otherwise publishing or in any manner exploiting the Works, "Veena in Vienna" or any sound recordings or part thereof incorporated in the said "Veena in Vienna" including the music tracks "Global Gear" and "On Cloud Nine", or doing any other act that would lead to infringement of copyright of the Plaintiffs in the said Works;

b) The Defendant is directed to surrender to the Plaintiffs for destruction, all compact discs, video discs, all digital works including master



copy, advertising materials etc., which includes the Works, "Veena in Vienna" as a sound recording or in any other manner whatsoever;

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c) The Defendant is directed to deliver to the Plaintiffs a true and faithful statement of accounts indicating the sales and profits already earned by the Defendant from the date of infringement of Plaintiffs' copyright and upon such enquiry to pay such profits earned by the Defendant as may be found to be due and payable to the Plaintiff No. 1 on such account being taken;

d) The defendant is directed to pay the plaintiff No.1 a sum of Rs.1,00,000/- as damages for the infringement of the plaintiffs' copyright within a period of four weeks from the date of receipt of a copy of this Judgment;

e) The defendant is directed to pay compensatory cost of Rs.4,00,000/- under Section 35A of the Code of Civil Procedure as applicable to Commercial Courts Act, 2015 within a period of four weeks from the date of receipt of a copy of this Judgment;

f) The defendant is also directed to pay the cost of the suit.



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36. In case, the defendant fails to pay the compensatory cost as stipulated supra, they are liable to pay interest at the rate of 12% p.a. from the date of the plaint till the date of realisation.

24.01.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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C.S.No.380 of 2011

List of the Exhibits marked on the side of the Plaintiffs:-

"Ex.P1 is the original of the Music Rights License Agreement. Dated on 01.12.2011.

Ex.P2 is the original of the Music Rights License Agreement (Extension of term) dated on 02.12.2014.

Ex.P3 is the Copy of the printout of E-mail from plaintiff No.1 to Defendant dated 25.11.2015.

Ex.P4 is the photocopy of the Legal Notice dated January 25,2016 issued on behalf of the Plaintiffs dated 25.01.2016.

Ex P5 is the Copy of the printout of various websites wherein the works are available for sale from 2011-2017.

Ex.P6 is the Copy of the printout of various reviews of the Works that are publicly available from 2011-2017.

Ex.P7 is the copy of the CD//MP3 player containing the Works.



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C.S.No.380 of 2017

Ex.P8 is the copy of the VCD/MP4 player containing the advertisement of the Respondent.

Ex.P9 is the office copy of the letter written by the plaintiff to the television channel dated 04.08.2017.

Ex.P10 is the original of the revenue statement dated 23.12.2021.

Ex.P11 is the original sample license agreement dated 01.04.2021."

List of the Exhibits marked on the side of the defendant:-

"Ex.D1 is the printout of the invoice issued by M/s Verve Media creations Pvt. Ltd vide invoice no.15 dated 05.08.2016 (The Learned counsel for the plaintiff objected that it is a 3rd party document it is not relevant to this case and 65B affidavit filed only today)

Ex.D2 is the printout of the Email communication between Verve Media Creations Pvt Ltd to the defendant dated 03.07.2018 (The Learned counsel for the plaintiff objected that it is a 3rd party document it is not relevant to this case and 65B affidavit filed only today)



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Ex.D3 is the printout of web page of M/s Verve Media Creations Pvt Ltd (The Learned counsel for the plaintiff objected that it is a 3^a party document it is not relevant to this case and 65B affidavit filed only today).

Ex.D4 is the photocopy of the accounts statement of the defendant for the period 09.05.2015 to 27.12.2016 (The Learned counsel for the plaintiff objected that in the 65B affidavit the Manager of Defendant who has been authorized, but no authorization is filed, In 65B affidavit there is no details about device and printer which has been used by the company had not given. The documents is signed by Manager but the seal affixed is of the managing partner of the defendant)

Ex.D5 is 65B affidavit."

24.01.2024

ab



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C.S.No.380 of 2017

ABDUL QUDDHOSE. J.,

ab

C.S.No.380 of 2017

24.01.2024