

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 597 OF 2015
IN
SUIT NO. 1539 OF 2012**

Phonographic Performance Ltd.	...Plaintiff
<i>Versus</i>	
India Radio Ventures Pvt. Ltd. & Sony Music Entertainment India Pvt. Ltd.	...Defendant

Ms. G. Mistry, with Mr. M. Upadhye, i/b Madhvi Deshpande Ravuri,
for the Plaintiff.

Mr. V.R. Dhond, Senior Advocate, with Mr. R. Khandekar, Ms. P.
Deshpande & Ms. S. Damle, i/b Mr. S. Sethia, for the
Defendant.

CORAM: G.S. PATEL, J
DATED: 13th October 2015

PC:-

1. Heard Ms. Mistry for the Plaintiffs and Mr. Dhond for India Radio Ventures Pvt. Ltd., originally the only Defendant and now, of convenience and since I propose to allow the present appln, the 1st Defendant.
2. The suit was originally brought by the Plaintiff as a Copyright Society registered under Section 33 of the Copyright Act, 1957. The

action is one in infringement. In the suit as originally filed, a Written Statement was filed by the 1st Defendant, issues were framed and on 22nd July 2013, the Plaintiff filed its Affidavit of Evidence.

3. In the meantime, the Copyright Act, 1957 was amended by the Copyright (Amendment) Act, 2013, one that came into effect on 20th June 2012. This amendment introduced Section 33(3-A) with two provisos. The second of these clearly states that existing Copyright Societies (such as the Plaintiff) were compulsorily to get themselves registered under that Chapter within one year from the date of commencement of the amending act, i.e., by 19th June 2013. The corresponding Copyright Rules, 2013 were brought into effect on 14th March 2013.

4. The Plaintiff made an application for registration on 9th May 2013. On any reading of the proviso it had only till 19th June 2013 “to get itself registered”. Ms. Mistry states that it was sufficient for the Plaintiff to have applied before that date, because the Plaintiff could not possibly ensure that the Copyright Board met and decided the Plaintiff’s application before the statutory cut-off date. This might have been of some significance had that application been pending, but it is now accepted position that the Plaintiff withdrew its application on 20th May 2014.

5. Today, therefore, as on the date of this Chamber Summons filed by the Plaintiff for amendment, the Plaintiff is not a Copyright Society under Section 33. It is, however, a private limited company and claims to have either assignments or licenses, all valid and

subsisting, in its favour in respect of most if not all of the works that it used to administer as a Society. The proposed amendment seeks to put all these facts on record. Certain additional annexures are proposed. Importantly, there is no change in the cause title or array of parties except for the addition of Defendant No. 2, Sony Music Entertainment Limited, which is said to have granted a license to the Plaintiff. There are no additional prayers sought.

6. Mr. Dhond for the 1st Defendant submits that the proposed amendment alters the nature of the suit itself. It is a suit originally brought by a Society and is now being converted to a suit by an assignee or licensee. Given that the Plaintiff has already filed an Affidavit of Evidence on 22nd July 2013, trial has already commenced and this amendment cannot, therefore, be allowed on any reading of Order 6 Rule 17 of the Code of Civil Procedure, 1908. He says that it is impossible to arrive at the conclusion contemplated in the proviso to that Rule to say that the Plaintiff could not have raised the matter before the commencement of trial, i.e., at least before filing of the Affidavit of Evidence. There is also a question of jurisdiction based on his reading of Section 62 of the Copyright Act, but that is a point that he will take at the final hearing of the pending Notice of Motion.

7. Ms. Mistry for the Plaintiff relies on the decision of the Supreme Court in *Sampath Kumar v Ayyakannu & Anr.*¹ to say that it is possible in a given case to restrict the amendment in time so that it does not relate back to the date of institution of the suit. She says that any other precautionary steps or orders may also be made.

¹ (2002) 7 SCC 559

Not to allow the amendment would result in multiplicity of proceedings; after all, the reliefs that the Plaintiff seeks, in either capacity, are exactly the same. There is also the matter of pendency of the Plaintiff's Notice of Motion, one that would be undoubtedly further delayed were the Plaintiff be driven to filing a fresh suit and moving a fresh application for interim relief in that new suit. On the other hand, allowing these amendments entails relatively little additional effort on either side: a supplemental Written Statement, perhaps additional issues, a few more documents and a further Evidence Affidavit. While she does not suggest that the trial has not "commenced" within the meaning of law, she does point out that no cross-examination has commenced nor have the Plaintiffs' documents been marked. There is, therefore, no conceivable prejudice likely to come the 1st Defendant's way if the amendment is allowed.

8. While I do not think that Mr. Dhond's opposition is entirely incorrect, in the sense that the amendment could certainly be made earlier, I do not think it is necessary to segregate the Plaintiff's suing capacities in the manner he suggests. Ms. Mistry has a point when she says that Mr. Dhond's passion for neatness, as legendary as it is admirable, should not be allowed to control an application for a patently equitable exercise of judicial discretion. The best, she says, should not be allowed to become the enemy of the good.

9. I also do not think this application necessarily alters the nature of the suit. The Plaintiff having withdrawn its application before the Copyright Board for re-registration as a Copyright Society, it is now irreversibly committed to its present status as an

assignee or a licensee of the copyrights in question. There can be no going back on that. To drive the Plaintiff to filing a fresh suit would I think be needlessly expensive and would considerably delay an adjudication of a materially unchanged claim. Prior to the proposed amendment, the Plaintiff claimed to be able to administer the copyrights in question as a Society. It now claims to have either an assignment or a license for those very works it earlier claimed to be able to administer. I do not think this constitutes an alternation of the nature of the suit at all. None of the rights of the Defendants are prejudiced in any manner if the amendment is allowed. As against that, the Plaintiff would be considerably prejudiced in terms of time, money and other expenses if the amendment is refused.

10. I will allow the Chamber Summons.

11. Leave to amend in terms of the draft amendment handed in, taken on record and marked “X” for identification with today’s date. Amendment to be carried out on or before 6th November 2015. Amended plaint to be served on the Defendants on or before 23rd November 2015. Supplemental Written Statement by the 1st Defendant to be filed and served on or before 14th December 2015. Written statement by the 2nd Defendant also to be filed and served on or before that date. List the Suit for framing additional issues, if any, and for further directions on 16th December 2015.

(G. S. PATEL, J.)