

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

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Judgment delivered on: 29.04.2015.

+ **FAO(OS) 72/2015**

**THE GRAMOPHONE COMPANY INDIA LTD** ... Appellant

versus

**SUPER CASSETTE INDUSTRIES LTD** ... Respondent

## **Advocates who appeared in this case:**

For the Appellant : Mr Chander M. Lall and Ms Nancy Roy

For the Respondent : Mr Prachi Agarwal

## **CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

## **JUDGMENT**

### **BADAR DURREZ AHMED, J (ORAL)**

### **CM No. 2402/2015**

This is an application for condonation of delay.

The delay in filing is condoned.

### **FAO(OS) 72/2015 and CM No. 2401/2015**

1. This appeal is directed against the order dated 20.11.2014 whereby a learned Single Judge of this court has directed that issue Nos. 1 and 2 cannot be treated as preliminary issues. This direction is clearly erroneous. This is so because earlier a Division Bench of this court in appeals arising out of the

same proceedings by an order dated 29.02.2012 disposed of the said appeals in the following manner:-

“Learned counsel for the parties state that they have discussed the matter and request that the appeals be disposed of in the following terms:-

- (i) The suit is listed before the court for framing of issues on 10.04.2012, on which date the learned Single Judge will frame the issues and the legal issues be treated as preliminary issues, which do not require any evidence to be recorded; and
- (ii) The interim arrangement as per order dated 16.08.2010 made absolute on 21.11.2011 will continue to operate during the pendency of the suit.

The appeals accordingly stand disposed of.”

From the above, it is evident that the order was a consent order and the appeals were disposed of, *inter alia*, with the understanding that the learned Single Judge would frame the issues and that the legal issues which do not require any evidence to be recorded would be treated as preliminary issues. The learned Single Judge, on 13.04.2012, framed issues and the learned counsel for the parties agreed to treat issue Nos. 1 and 2 as preliminary issues. This would be evident from the order passed on 13.04.2012 which is to the following effect:-

“The following issues are framed:

1. Whether Section 52(1)(j) of the Copyright Act, 1957, statutorily licences/mandates the making of version recordings without any requirement of consent from the owner of copyright? OPD
2. If the issue No. 1 is decided in favour of the defendant, whether or not the defendant is permitted to make remixes/cinematographic films of the sound recordings? OPD
3. Whether or not the contents of the inlay cards constitute passing off/unfair competition? OPD
4. Whether the defendant enjoys separate sound recording copyright in version recording issued by it by using a fresh set of musicians, singers etc.? OPD
5. Whether the plaintiff is entitled to recovery of license and damages? OPP
6. Relief.

The learned counsels for the parties have no objection if issues No.1 & 2 are treated as preliminary issues. They also state that these issues are purely legal, hence no evidence is required.

List on 14.08.2012.”

2. In this backdrop, in our view, the learned Single Judge, considering the matter on 20.11.2014, could not have directed that issue Nos. 1 and 2

were not to be treated as preliminary issues. Consequently, we set aside the order dated 20.11.2014. As originally agreed between the parties, issue Nos. 1 and 2 shall be taken up as preliminary issues.

3. The appeal is allowed as above. There shall be no order as to costs.

**BADAR DURREZ AHMED, J**

**SANJEEV SACHDEVA, J**

**APRIL 29, 2015**

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