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

+ CS(OS) 632/2006

THE INDIAN PERFORMING RIGHT SOCIETY LTD Plaintiff

Through: Ms. Anu Bagai, Adv.

Versus

ANIL MEHRA & ANR

..... Defendants

Through: Mr. Setu Niket, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.07.2016

1. The counsels state that the proceedings in the present suit have already been stayed vide order dated 14th December, 2009 on an application of the defendants under Section 10 of the CPC.
2. However notwithstanding the same, the matter is being listed owing to certain pending applications.
3. The counsels have been heard.
4. Of the pending applications, IA No.5080/2007 (of defendants for taking on record certain facts) and IA No.15665/2009 (of plaintiff for hearing of IA No.6739/2006) are stated to have become infructuous and are accordingly disposed of.
5. Vide order dated 10th May, 2007 on IA No.4210/2006 (of plaintiff u/O 39 R-1&2 CPC), the defendants, instead of being restrained as was sought, were as an interim arrangement directed to make payment at certain rates to the plaintiff.

6. The counsel for the plaintiff states that the defendants have been making the said payment till now.
7. The defendants filed IA No.15820/2011 for recall of the order dated 10th May, 2007.
8. It is stated that the Division Bench of this Court in another matter held that the plaintiff is not entitled to collect royalty charges for its members or to act as a copyright society. It is further stated that the plaintiff has preferred an appeal to the Supreme Court against the said order of the Division Bench of this Court and which appeal is being heard but there is no stay of the judgment of the Division Bench. The counsel for the defendants thus seeks recall of the order dated 10th May, 2007 directing the defendants to make payment to the plaintiff.
9. The fact of the matter however remains that the defendants are not entitled to broadcast or perform or communicate to the public literary or musical works in which the plaintiff earlier functioning as a copyright society had a right and which right of the plaintiff is now under consideration before the Supreme Court. However the doubt cast on the right of the plaintiff will still not vest a right in the defendants to violate the copyright. The copyright in the said works, if not in the plaintiff, will vest in the authors of the said literary and / or musical works.
10. The counsel for the defendants is also not able to dispute the aforesaid position.
11. In this state of affairs, IA No.4210/2016 and IA No.15820/2011 are disposed of with the following directions:

(I) The defendants will no longer be bound to make payment to the plaintiff in terms of the order dated 10th May, 2007;

(II) However, the defendants are restrained from broadcasting or performing or communicating to the public any literary and / or musical work in which the plaintiff earlier claimed a copyright, without taking licence / permission therefor from the person who may be now holding the copyright in the said works.

12. The suit is adjourned *sine die* with liberty to the parties to apply for revival thereof as and when the occasion arises.

Copy of this order be given *dasti*.

RAJIV SAHAI ENDLAW, J.

JULY 26, 2016

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