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

+ CS(COMM) 15/2015 & IAs No.24934/2015 (u/O 39 R-1&2 CPC) & 470/2016 (u/O 39 R-4 CPC)

SUPER CASSETTES INDUSTRIES PRIVATE LIMITED ..Plaintiff
Through: Ms. Prachi Aggarwal, Adv.

Versus

NOVABASE DIGITAL ENTERTAINMENT PVT LTD ...Defendant
Through: Mr. Saurabh Upadhyay, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **12.07.2016**

1. The plaintiff has sued for permanent injunction restraining the defendant, a multisystem operator, from infringing the copyright of the plaintiff in music, cinematographic films, sound recordings and / or other literary (lyrics) and musical works and for ancillary reliefs.
2. The suit was entertained and vide *ex-parte* ad-interim order dated 7th December, 2015, the defendant restrained from broadcasting, distributing and communicating to the public the cinematographic films, sound recordings and all related works including the musical works of the plaintiff.
3. The aforesaid interim order was made absolute vide order dated 1st April, 2016.
4. The pleadings have been completed and the suit is ripe for framing of issues.
5. Though the parties were referred to mediation but the same remained unsuccessful.

6. The counsel for the defendant seeks adjournment stating that the admission / denial has not taken place.
 7. No such adjournment can be granted at this stage. Even otherwise, considering the nature of the controversy, need for admission/denial is not felt.
 8. I have enquired from the counsel for the defendant as to what is the defence of the defendant to the suit.
 9. The counsel for the defendant states that the defendant had in fact obtained a licence from the plaintiff with respect to the copyright of the plaintiff and the term of which licence was till March, 2015 but the defendant even thereafter continued to make the payments as per the old terms and which were accepted till August, 2015, whereafter the plaintiff refused to accept the payments. It is further stated that the defendant was desirous of renewing the licence but the plaintiff raised the licence fee exorbitantly, owing to which the licence could not be renewed.
 10. The counsel for the plaintiff states that the plaintiff learnt that the defendant was making much more use of the copyright of the plaintiff than that disclosed and on the basis of which the licence fee was settled and hence increase in licence fee was sought.
 11. The counsels state that there is no fora for fixing / regulating the licence fee and the same is a matter of contract.
 12. Thus, this Court cannot go into the question whether the refusal of the plaintiff to renew the licence of the defendant was justified or not.
 13. The counsel for the defendant agrees that as far as the relief claimed of permanent injunction in the suit is concerned, without any licence, the
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defendant cannot use the copyright of the plaintiff and / or use the works in which the plaintiff has a copyright in any manner whatsoever.

14. It has thus been enquired from the counsel for the plaintiff as to what remains in the suit.

15. The counsel for the plaintiff states that damages for the period from September, 2015 till the grant of injunction on 7th December, 2015 have to be assessed. It is stated that the defendant inspite of legal notice did not desist from infringing the copyright.

16. I am of the view that no purpose will be served in putting the suit to trial for assessment of damages if any due for the subject period. The said purpose would be met by awarding costs of the suit to the plaintiff against the defendant.

17. Accordingly, the suit is decreed:

(I) For permanent injunction in terms of para 37(i) of the plaint; and,

(II) For recovery of costs of the suit by the plaintiff from the defendant in the sum of Rs.2 lakhs payable in two instalments, with Rs.1 lakh being payable within four weeks and the balance Rs.1 lakh being payable within eight weeks of today. If the costs are not so paid, the same shall also incur interest @ 10% per annum from the date of this decree till the date of realisation.

18. In the light of the above, the claim of the plaintiff for the other reliefs in the plaint is not considered worth adjudication and is thus denied.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JULY 12, 2016/bs..

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