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

Date of Decision: September 01, 2016

+ **FAO 437/2015**

M/S PHONOGRAPHIC PERFORMANCE LTD. Appellant

Through: Dr. Ashwani Kumar, Senior Advocate
with Mr. Jagdish Sagar and Mr.
Smitakshi Jalukdev, Advocates

versus

AMITABH DEVENDRA & ANR. Respondents

Through: Mr. Abhinav Vashisht, Senior
Advocate with Ms. Ruknini Bobde
and Ms. Nandita Bajpai, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% (ORAL)

C.M.No.317/2016

By way of this application, additional evidence i.e. copy of Communications of 15th December, 2015, etc. (*Annexure-A colly.*) are sought to be brought on record. There is no opposition to this application and rightly so. The application is allowed and the Communications (*Annexure-A colly.*) filed alongwith it are taken on record

The application stands disposed of.

FAO 437/2015 & C.Ms. 32797/2015 & 32831/2015

Impugned order of 23rd December, 2015 rejects appellant's application for interim injunction to restrain respondents-defendants from infringing appellant's copyright by authorizing members of respondent No.2-association to publically perform on the sound recordings of appellant's repertoire without obtaining licence. The reasoning adopted by

trial court to decline appellant's application for interim injunction is as under: -

“Getting of license from the plaintiff by each individual is a prerogative of the each individual of the Hotel owner and nobody can compel the Hotel owners not to get license/or to get license from the plaintiff company. Moreover it is not the case of the plaintiff that any individual directly infringing his Copy Right or conducting any event in violation of its Copy Right and plaintiff is seeking the relief in the present suit only on the basis of mere apprehension that they may infringed the Copy Rights, if they not get license from the plaintiff. In my considered opinion, no ground for ex-parte ad interim injunction is made out at this stage.”

Learned senior counsel for appellant assails the impugned order on the ground that appellant is well within its right to issue licences by virtue of assignment of the copyright and because appellant has exclusive licence for the repertoire of sound recordings and respondent has no locus to challenge appellant's right to issue licences and if any licensee wishes to see the documents pertaining to the assignment or the authority of the appellant, then it can be certainly made available to such licensee, but respondent-association cannot issue the impugned communications i.e. Annexure A-9 and Annexure A-10. Learned senior counsel for appellant further submits the respondents' communication of 23rd December, 2015 (*Annexure-D*) appended to CM APPLN.32831/2015 (for vacation of stay) is also questionable as respondent-association has no legal right to assert that appellant is violating Section 33 (1) of the Copyright Act, 1957. It is pointed out by learned senior counsel for appellant that in view of Section 55 of the Copyright Act, 1957, there is a presumption of ownership of appellant's

repertoire of sound recordings.

On the other hand, learned senior counsel for respondent-association submits that the respondent-association had received some complaints from its members and therefore, the communications impugned by the appellant were issued and in a later communication of 23rd December, 2015 (Annexure-D), respondent-association has clarified that the licensee may contact the copyright owners/agents directly and pay them the royalty or if appellant is able to show any assignment in its favour, then in respect of those copyrights recordings (music) appellant may be paid the royalty, etc.. Learned senior counsel for respondent-association submits that the respondent is well within its right to maintain the stand as taken in the later communication (Annexure-D).

Upon hearing and on perusal of impugned order and the material on record, I find that the rejection of appellant's application for interim injunction was not warranted as the respondent-association needs to be confined to the stand taken in its later communication (Annexure-D). That is to say, respondent-association shall abide by the stand that if any licensee has any grievance, then appropriate course is to contact the copyright owner directly and nothing more.

This appeal and the pending applications are disposed of while allowing appellant's application for interim injunction to the extent indicated above. It is clarified that no observation herein is made on merits of the case.

(SUNIL GAUR)
JUDGE

SEPTEMBER 01, 2016

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