

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 13 OF 2017
IN
NOTICE OF MOTION (L) NO. 3623 OF 2016
IN
SUIT (L) NO. 1190 OF 2016
WITH
NOTICE OF MOTION (L) NO. 73 OF 2016

Percept Live Private Limited	.. Appellant
V/s	
Phonographic Performance Limited & Ors.	.. Respondents

Mr. Chirag Mody with Ms. Ankita Agrawal and Mr. Jatin Pore i/b
DSK Legal for the appellant.
None for the respondents.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATE : 19th JANUARY 2017

P.C.:

The controversy raised before us in the appeal is that the impugned order dated 12th January 2017 is not strictly in terms of the direction at para 5 of the order dated 27th December 2016. It is relevant to understand what was the direction, especially the obligation of the appellant before the Trial Court in terms of para 4 of the order dated 27th December 2016. Therefore, it is necessary to mention what exactly was the direction given at paras 4 and 5, which read as follows:

“4. In the circumstances, given the fact that the event starts tomorrow, Mr. Dhond, the learned Senior Counsel for the defendant no.3 states that his client is willing to give an undertaking to this Court to secure the plaintiff's claim if any. Mr. Maloy Poddar, Vice President-Finance who is present in Court undertakes on behalf of the respondent no.3 to pay to the plaintiffs any amount that may be determined to be payable to the plaintiffs in respect of the events Sunburn 2016.

5. The undertaking is accepted. In the circumstances, the plaintiffs will be at liberty to quantify the amount claimed as payable before the hearing of the notice of motion so as to enable the Court to quantify the amount payable if any by the defendant no.3 or such of them who are found liable. Furthermore, Mr. Dhond says once again on instructions of Mr. Poddar that the amounts so payable shall constitute a charge on all revenues of the respondent no.3.”

2. Reading of para 4 clearly indicates that there is unconditional undertaking on behalf of the appellant to pay to the plaintiffs any amount that may be determined to be paid to the plaintiffs in respect of the event Sunburn 2016. Para 5 clearly indicates that the plaintiffs are at liberty to quantify the amount before disposing of the notice of motion before the learned Single Judge, and also indicates who shall be liable to pay. In December 2016 order, in clear terms the 3rd defendant gives an unconditional

undertaking to pay the amount that may be determined by the plaintiffs. After completing the performance, now they are contending that they are not liable to pay any amount or at least the amount they are not liable to pay which is now demanded by the plaintiffs.

3. We direct the appellant to deposit 50% of the amount now determined or claimed by the plaintiffs so as to allow the learned Single Judge to proceed further and decide the notice of motion on merits. The said deposit is a pre-condition for hearing the notice of motion. The deposit shall be made within 10 days from today.

4. With these observations, the appeal is disposed of.

(G.S. KULKARNI, J.)

CHIEF JUSTICE