

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL APPEAL NO. 118 OF 2017
IN
NOTICE OF MOTION NO. 1236 OF 2016
IN
COMMERCIAL SUIT NO. 136 OF 2014**

The Indian Performing Right Society Ltd. ... Appellant

Versus

Duet India Hotels Pvt. Ltd. and another. ...
Respondents

.....

Mr. Ravi Kadam, Senior Advocate a/w Sandeep Marne and Vishal Shirke for Appellants.

Mr. Ramesh Soni a/w Mr. Sameer Pandit a/w Ms. Madhupreetha Elango i/b M/s. Wadia Ghandy and Co. for respondents.

.....

**CORAM : NARESH H. PATIL AND
R. G. KETKER, JJ.**

DATE : 24th NOVEMBER, 2017.

P. C. :

1. Admit. By consent of parties, heard finally.
2. The appellant is the original plaintiff. The suit was filed in the year 2014. One of the prayer clause of the suit reads as under.

“a) An order of permanent injunction restraining the Defendants, its Directors, officers, servants, agents representatives and all others acting for and on its behalf from in any manner communicating and/or performing the musical and/or literary works of members of Plaintiff within the premises and doing any other act infringing the Plaintiff's copyrights;”

3. The appellant has filed Notice of Motion No. 1236 of 2016 in Commercial Suit No. 136 of 2014. The Prayer clause (a) reads as under.

“(a) Pending the hearing and final disposal of the present Suit, the Defendants, their Directors, officers, servants, agents representatives and all others acting for and on their behalf be restrained by an order of temporary injunction of this Hon'ble Court from in any manner communicating and/or performing the musical and/or literary works of members of Plaintiff within their hotel premises and/or in any event held or organized in their hotel premises and doing any other act infringing the Plaintiff's copyrights.”

4. By an impugned order dated 07/02/2017 learned Single Judge of this Court has dismissed the Notice of Motion No. 1236 of 2016.

5. The Learned Senior Counsel appearing for the appellant submitted that the impugned order needs to be quashed and set aside for want of reasoning. The appellant is owner of copyright in musical literary works. Learned Counsel referred to Paragraph 4B of the Suit wherein it is contended that the plaintiff has at present over 3500 members comprising Music Composers, Lyric Writers, Music Companies, Film Producers, etc. Copies of sample Deeds of Assignment executed by Mr. Rajesh Roshan on 20.02.1988, the Gramophone Company of India Ltd. (now known as Saregama India Limited), Mr. Anand Bakshi on 05.06.1970 (prior to registration of Plaintiff as Copyright Society) were annexed to the complaint. Learned Counsel by referring to further paras of the plaint, prayer clauses and relevant documents submitted that the learned Single Judge ought to have considered the pleadings of the parties and dealt with the issue in its proper perspective.

6. Learned Counsel appearing for respondents submitted that prayer made in the Suit relating to grant of injunction is identical with the prayer made in the Notice of Motion. The plaintiff is a

Society acting on behalf of its members. Reference was made to provisions of Sections 30 and 33 of the Copyright Act, 1957. Relevant documents are not placed on record. The plaintiffs have failed to make out a prima-facie case for grant of relief in their favour. Whatever relief claimed is general in nature and cannot be granted, according to learned Counsel.

7. We have perused the record placed before us and impugned order.

8. We find that the learned Single Judge could have provided with appropriate reasoning while passing impugned order of dismissal of notice of motion. In absence thereof it becomes difficult to appreciate the issue raised by the contesting parties at appellate stage. In the facts we find it appropriate to remand the matter back to the learned Single Judge to provide appropriate reasoning, on its own merits after hearing the contesting parties.

9. The impugned order dated 07/02/2017 dismissing the Notice of Motion No.1236 of 2016 in Commercial Suit No. 136 of

2014 is set aside. The matter is remanded back to the learned Single Judge of this Court for deciding the Notice of Motion on its own merits. All contentions are kept open.

10. The appeal is partly allowed in the above terms.

(R. G. KETKAR, J.)

(NARESH H. PATIL, J.)