

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 04TH DAY OF AUGUST 2017

THE HON'BLE DR.JUSTICE ANITA SUMANTH

A.No.1964 of 2017
in
C.S. No.975 of 2016

C.S.NO.975 OF 2016:-

M/S. Phonographic Performance Limited
Rep. By Its Authorized Signatory
Mr. D. Dinesh,
F1, First Floor, Jai Park Castle,
New No. 4 old no. 8 Turn Bulls Road,
Nandanam Extension, Nandanam
Chennai600035

...Plaintiff

-Versus-

1.The Accord Metropoliton,
35, 36, 37, G.N. Chetty Road,
T.Nagar, Chennai - 600 017.

2.The Pride Hotel,
216, E V R Periyar Salai,
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

3.Green Park,
N.S.K.Salai, Vadapalani,
Chennai - 600 026.

4.The Raintree,
120, St. Mary's Road,
Alwarpet,
Chennai - 600 018.

5.The Spring Hotel,
New # 11, Kodambakkam High Road,
Chennai - 600 034.

6.The Raintree Hotel,
Ceebros Hotels Pvt Ltd,
636, Anna Salai, Teynampet,
Chennai - 600 035.

7.Vgp Golden Beach Resort,
East Coast Road, Injambakkam,

Chennai - 600 041.

8.Hablis Hotel,
19, Gst Road, Guindy ,
Chennai - 600 032.

9.Radha Regent,
171, Jawaharlal Nehru Salai,
Arumbakkam, Chennai - 600 106.

10.Fortune Select Palms,
#142, Old Mahabalipuram Road, Okkiym,
Thoraipakkam, Chennai - 600 096.

11.Hotel Abu Sarovar,
926, Poonamallee High Road,
Chennai - 600 084.

12.The Promenade Hotels,
23, Goubert Avenue,
Pondicherry- 605 001.

13.Bonjour Bonheur Ocean Spray,
A Division Of Bonjour Bonheur Pvt Ltd,
7, 8, 9, Ecr Main Road,
Manjakuppam, Kilputhupattu Village,
Koonimedu Post, Villupuram - 604 303.

14. Accord Puducherry,
1, Thilagar Nagar,
Ellaipillaichavady,
Puducherry - 605 009.

15.Jenneys Residency,
2/2, Avinashi Road, Opp Cit,
Coimbatore Aerodrome Post,
Coimbatore - 641 014.

16.The Arcadia,
4, Avinashi Road Godwins,Sitra
Coimbatore - 641 014.

17.Hotel Vijay Park Inn,
101, Senguptha Street,
Ram Nagar,
Coimbatore - 641 009.

18.Cag Hotels (P) Ltd,
312, Bharathiyar Road,
New Sidhapudur,
Coimbatore - 641 044.

19.Ramyas Hotels Pvt Ltd,
13-D/2, Williams Road,

Tiruchirappalli - 620 001.

20.Rathna Residency,
#355, Variety Hall Road,
Coimbtore - 641 001.

21.Svarga Residency,
#85-C, Arun Nagar, Maruthamalai Road,
Vadavalli,,
Coimbatore - 641 041.

22.Jc Residency,
14, Lady Doak College Road,
Madurai - 625 002.

23.Hotel Germanus,
28, By Pass Road,
Madurai - 625 010.

24.Poppys Hotel,
122, Sks Nagar First Toll Post,
Opp. Meenakshi Mission Hospital,
Uthankudi, Madurai - 625 007.

25.Parsons Court,
85, Mengles Road,
Nagal Nagar,
Dindigul - 624 003.

26.Chenduran Park,
33/1, Old R.M.S.Road, Near Railway Station,
Nagal Nagar,
Dindigul - 624 003.

27.Vivera Grande,
19, New Agraharam,
Palani Road,
Dindigul - 624 001.

28.Sangam Hotel,
Collectorate's Office Road,
Trichy - 620 001.

29.Sangam Hotel,
Trichy Road,
Tanjore - 613 007.

30.Oakwood Suites - Oakwood
Premier Prestige Bangalore
24,Vittal Mallya Road,
Bengaluru - 560 001.

31. Blue Frog

No. 3, Church Street, Beside Matteo Coffee Shop,
Ashok Nagar, Bengaluru - 560 001.

32. Indigo Live

71/72, Jyoti Nivas College Road,
6th Block, Industrial Layout, Koramangala,
Bengaluru - 560 095.

33. The Glass House

Shop No. 25/2, Lavelle Road,
Opp. Harley Davidson Showroom,
Bangalore - 560 001.

34. Barleyz

2/3, 3rd Floor, 80 Feet Road,
Barleyz Junction,
Sony World Crossing, Above Kfc And Pantaloon,
Koramangala, Bengaluru - 560 034.

35. Elements Mall

Survey No. 132(P), 133(P) & 134(P)
Of Nagavara Village,
100' Wide Thanisandra Main Road,
Kasba Hobil,
Bengaluru - 560 077.

36. The High Ultra Lounge

Roof Top, World Trade Center,
Brigade Gateway Campus,
26/1, Dr. Rajkumar Road,
Malleshwaram West,
Bangalore - 560 055.

37. Hilton - Umbel Properties (P) Ltd.

Embassy Golf Links Business Parkoff
Intermediate Ring Road
Bangalore - 560 071.

38. Loft-38 - Gk Corporation Pvt. Ltd.

No. 763, 100 Ft. Roadhal 2nd Stage,
Indiranagar
Bangalore - 560 038.

39.Vapour

- Zoodle Hospitality & Consulting Pvt. Ltd.
773, 100 Ft. Roadindiranagar
Bangalore - 560 038.

40.Aroi

51, 4th Floor, Brs Towers,
Sarjapur Road, Kaikondrahalli,
Bangalore - 560 035.

41.Watsons Grub Pub

Skywalk, 4th Floor, Hal 2nd Stage, Indiranagar
Bangalore - 560 008.

42.La Marvella

#1, 14th Cross, South-End Circle,
2nd Block, Jayanagar,
Bangalore - 560 011.

43.Smoke House

Plot No. 1209, Ward 72,
Hal 2nd Stage, 100 Ft Road, Opp. Starbucks Coffee,
Indiranagar, Bangalore - 560 008.

44.Sherlocks

Bakerstreet Hospitality Pvt. Ltd.
60/1, Coles Road, Frazer Town
Bangalore - 560 005.

45.Premier Inn - Premier Inn India Pvt. Ltd.

3-A1, Doddanakundi Indl. Area,
Opp. Ifb Campus, Mahadevapura, Whitefield
Bangalore - 560 048.

46.The Woodrose Club

Brigade Millenium Campusj.P. Nagar,
7th Phase, Puttenahalli
Bangalore - 560 078.

47.Indian Kitchen

86, Oak Shot Place,
M.G Road,
Bangalore - 560 001.

48.Prost - Yardhouse Brewery Pvt. Ltd.
749, 10th Main80 Ft. Road,
Koramangala
Bangalore - 560 035.

49.Davanam Sarovar Portico Suites
Opp. Madiwala Police Station,
Hosur Main Road, Koramangala,
Bangalore - 560 068.

50.The Windflower Resorts & Spa
Maharana Pratap Road
Nazarbad
Mysore - 570 010.

51.The Atrium Hotel
110/1a1, Bangalore-Mysore Road
Near Columbia Asia Hospital
Mysore - 570 003.

52.The President Hotel
2723, Near Hardinge Circle,
Bangalore-Nilgiri Road,
Mysore - 570 001.

53.Sandesh The Prince
3, Nethra Nivas,Nazarbad Main Road,
Mysore - 570 010.

54.Retox Lounge Bar
Near Hotel Wood Side,Balmatta Road,
Hampankatta,
Mangalore - 575 001.

55.Pulse Café Restaurant
Woodside Building,
Near Don Bosco Hall,
Balmatta Road, Hampankatta,
Mangalore - 575 001.

56.The Liquid Lounge
Door No. 14-4521/12, Bharath Mahal,
Balmatta Road, Near Don Bosco Hall,
Hampankatta,
Mangalore - 575 001.

57.Dv8 - The Lounge Bar
3rd Floor, Empire Mall,M.G Road,
Kodialbail,
Mangalore - 575 003.

58. Hotel Deepa Comforts
Deepa Plaza, Kodialbail,M.G Road,
Mangalore - 575 003.

59. Moti Mahal Hotel
Falnir Road,
Mangalore - 575 001.

60. Lobo's River View
Morgans Gate Road,Bolar,
Mangalore - 575 002

61. Harbour View Residency,
Opposite Cochin Shipyard,
M G Road, Atlantis, Ravipuram,
Kochi,
Kerala-682015.

62. Highway Garden,
Mahindra First Choice,
Nh Bypass North End,
Salem - Kochi Hwy,
Press Club Colony,
Padivattom,
Edappally,
Ernakulam, Kerala-682024.

63. The Wyte Fort,
N H No 47, Maradu,
Ernakulam, Kerala-680304.

64. Pj Princess Regency,
7/52-D, Pudukkottai, Vypeen Islands,
Puthuvype,
Kochi, Kerala-682508.

65. Gokulam Park,
Banerji Road, Kaloor,
Ernakulam,
Kerala-682017.

66. Flora Airport Hotel,
Opp. International Terminal - Kochi Airport,
Kochi, Kerala-683572.

67. Saj Earth Hotel,
Near Cochin International Airport,
Nedumbassery,
Cochin, Kerala-683572.

68. Hotel Airlink Castle,
Salem-Kochi-Kanyakumari Highway,
Near Cochin International Airport,
Athani P.O., Nedumbassery,
Ernakulam, Kerala-683585.

69. Hotel Diana Heights
Nh-47, Near Cochin International Airport,
Nedumbassery, Athani,
Kerala-683585.

70. Hycinth By Sparsa
Manorama Road, Thampanoor,
Trivandrum -695001.

71. Hotel Lake Palace,
Thonikadavu, Kadinamkulam Road,
Puthucurichy,
Kadinamkulam,
Trivandrum-695303.

72. Hotel Esturay Island Resort,
Poovar, Po,
Trivandrum-695525.

73. Hotel Isola Di Cocco Poovar,
Poovar, Po,
Trivandrum-695525.

74. Hotel The Quilon Beach,
Beach Road, Pallithottam,
Thamarakulam,
Kollam-691006.

75. Hotel Sp Grand Days,

Near Fly Over,
Panavila Junction,
Thycaud,
Trivandrum-695014.

76. Fortune Hotel The South Park,
M.G Road,
Thiruvananthapuram - 695034.

77. Hotel Uday Samudra,
Gv Raja Road, Samudra Beach,
Kovalam,
Trivandrum-695527.

78. Hotel All Season,
Mathilil Kadavoor,
Kollam-691601.

79. Hindustan Beach Retreat,
Papanasam Beach,
Janardhanapuram Varkala,
Thiruvananthapuram-695141.

80. Hotel Copper Folia,
28/1940a,Thondayad Bypass Road,
Nellikkode,Calicut - 673016.

81. West Way Hotel,
Kannur Road, West Nadakkavu,
Calicut - 673006.

82. The Raviz Kadavu Resort,
Kanyakumari-Panvel Hwy,Azhinjilam
,Calicut - 673632.

83. Hotel Malabar Palace,
Manuelsons Junction, Gh Road
Palayam,
Calicut -673001.

84. Sea Queen Hotel,
Beach Road,
Calicut - 673 001.

85. Beach Hotel,
Beach Road,

Calicut - 673 032.

86. Hotel Royalkington,
Taluk Road, Puthiyara,
Calicut -673304.

87. Hotel Paramount Tower,
Town Hall Road,
Mananchira,
Calicut - 673 001.

...Defendants

A.NO.1964 OF 2017:-

South India Hotels and Restaurants Association,
Rep by Authorised signatory, Mr.T.Natarajan,
Having Office at No.3.
6th Floor, Seethakathi Business Centre,
Anna Salai,
Chennai-600 006.

...Applicant/Proposed Defendant

-Vs-

1.M/S. Phonographic Performance Limited
Rep. By Its Authorized Signatory
Mr. D. Dinesh,
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Bangalore - 560 048.

47.The Woodrose Club
Brigade Millenium Campusj.P. Nagar,
7th Phase, Puttenahalli

Bangalore - 560 078.

48.Indian Kitchen
86, Oak Shot Place,
M.G Road,
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Bangalore - 560 035.

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Opp. Madiwala Police Station,
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Bangalore - 560 068.

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Maharana Pratap Road
Nazarbad
Mysore - 570 010.

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N H No 47, Maradu,
Ernakulam, Kerala-680304.

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Puthuvype,
Kochi, Kerala-682508.

66. Gokulam Park,
Banerji Road, Kaloor,
Ernakulam,
Kerala-682017.

67. Flora Airport Hotel,
Opp. International Terminal - Kochi Airport,
Kochi, Kerala-683572.

68. Saj Earth Hotel,
Near Cochin International Airport,
Nedumbassery,
Cochin, Kerala-683572.

69. Hotel Airlink Castle,
Salem-Kochi-Kanyakumari Highway,
Near Cochin International Airport,
Athani P.O., Nedumbassery,
Ernakulam, Kerala-683585.

70. Hotel Diana Heights
Nh-47, Near Cochin International Airport,
Nedumbassery, Athani,
Kerala-683585.

71. Hycinth By Sparsa
Manorama Road, Thampanoor,
Trivandrum -695001.

72. Hotel Lake Palace,
Thonikadavu, Kadinamkulam Road,
Puthucurichy,
Kadinamkulam,
Trivandrum-695303.

73. Hotel Esturay Island Resort,
Poovar, Po,
Trivandrum-695525.

74. Hotel Isola Di Cocco Poovar,
Poovar, Po,
Trivandrum-695525.

75. Hotel The Quilon Beach,
Beach Road, Pallithottam,
Thamarakulam,
Kollam-691006.

76. Hotel Sp Grand Days,
Near Fly Over,
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Thycaud,
Trivandrum-695014.

77. Fortune Hotel The South Park,
M.G Road,
Thiruvananthapuram - 695034.

78. Hotel Uday Samudra,
Gv Raja Road, Samudra Beach,
Kovalam,
Trivandrum-695527.

79. Hotel All Season,
Mathilil Kadavoor,
Kollam-691601.

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82. West Way Hotel,
Kannur Road, West Nadakkavu,
Calicut - 673006.

83. The Raviz Kadavu Resort,
Kanyakumari-Panvel Hwy, Azhinjaalam
, Calicut - 673632.

84. Hotel Malabar Palace,
Manuelsons Junction, Gh Road
Palayam,

Calicut -673001.

85. Sea Queen Hotel,
Beach Road,
Calicut - 673 001.

86. Beach Hotel,
Beach Road,
Calicut - 673 032.

87. Hotel Royalkington,
Taluk Road, Puthiyara,
Calicut -673304.

88. Hotel Paramount Tower,
Town Hall Road,
Mananchira,
Calicut - 673 001.

... Respondents/Defendants

Application praying that this Hon'ble Court be pleased to pass an order impleading the Applicant as the 88th Respondent in C.S.No.975 of 2016 as necessary party.

This Application coming on this day before this court for hearing the court made the following order:

This is an application filed by the South India Hotels and Restaurants Association seeking to implead itself as the 88th respondent in C.S.No.975 of 2016.

2. The suit has been filed by the Phonographic Performance Limited, seeking permanent injunction restraining 87 named defendants from publicly performing or in any manner communicating the sound recordings (works) owned by it to the public, or allowing their premises or any premises under their control to be used for the said purposes, without license from the plaintiff, or otherwise infringing copyright in any work owned by the plaintiff.

3. Phonographic Performance Limited (in short 'PPL') is a company that deals with the administration of Copyrights of its members. Since inception, it has been licensing sound recordings for 'non-physical' use i.e., for all forms of exploitation of copyright in sound recordings except the manufacture and sale of physical copies such as vinyl discs, audio cassettes, USBs, MP3 formats and compact discs. Such non-physical exploitation of sound recordings, which the it licenses, includes public performance in hotels, restaurants and other venues, radio and television broadcasting, communication to the public through mobile, telephone, internet and the like. PPL performs the above functions as owner of copyright in sound recordings, in respect of non-physical usage of the same, for which, the plaintiff has obtained exclusive assignments and control. Mr. Harishankar, learned counsel appearing for PPL would state that its repertoire comprises of more than 7 lakh sound recordings, both film as well as non film genre.

4. Mr. Abdul Hameed for M/s. AAV Partners appears for the applicant, the South India Hotels and Restaurants Association (in short 'SIHRA'). I may mention at the outset that the application does not annexe the list of members to indicate its constituent members. It is thus unclear as to whether there is any similarity or identity between the defendants who are named in the plaint and the constituent members of the Association.

5. Be that as it may, in order to determine the validity of the request for impleadment, the provisions of Order 1, Rule 10 CPC may be referred to which read as follows;

10. Suit in name of wrong plaintiff- (1)
Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted thought a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on

the service of the summons.'

6. Thus, the party seeking impleadment is required to establish that it is a necessary party to the proceedings which, in my opinion, the SIHRA has not done. Primarily, it has not established that its constituent members have infringed any of the copyrights held by the plaintiff. In fact, in such an event, the specific constituent member would have itself been named as a defendant by PPL in the suit. The non-inclusion of any member of the SIHRA as a defendant in the plaint is thus obviously for the reason that there has been no cause of action relating to infringement that arose with respect to that member. The necessity of the impleadment of the SIHRA has thus, not been established by the applicant.

7. Reliance is placed by Mr.Abdul Hameed for M/s.AAV Partners on a decision of the Delhi High Court in *Event and Entertainment Management Association (EEMA) Vs. Union of India and others (WP (CC) 12076 of 2016)* to which the present plaintiff is also a party. The learned Single Judge holds that since the second, third and fourth respondents in that case, one of which is the present plaintiff, are no longer registered copyright societies, they may not be entitled to claim any rights in terms of Section 33 of the Copyright Act 1957.

8. In the present case, the plaintiff confirms that it has given up status as a copyright society and the protection sought by it as an owner of copyright is pursuant

to deeds of assignment entered into between itself and the owners of the musical works.

9.Mr.Abdul Hameed for M/s.AAV Partners would argue next that the non-impleadment of the SIHRA in the proceedings would greatly prejudice its members, in so far as any order obtained by the plaintiff in this proceeding as against the named defendants relating to the ownership of the Copyright would affect all other constituent members as well. This point has been considered earlier observing that the name of any entity with which the plaintiff has an agreement and who has infringed the rights of the plaintiff would find place as a defendant in the original suit. The presence of the other, unnamed members of the SIHRA is thus irrelevant and not necessary to the present proceeding.

10.Learned counsel for the respondent drew my attention to a decision of the Bombay High Court dated 21.12.2016 in *Phonographic Performance Limited Vs. Welcom Hotel Rama International (ITC) & Others* (Notice of Motion (L) No.3521 of 2016 in Suit (L) No.1136 of 2016). The court observed that it was necessary in today's digital age to publish the list of materials over which a party claimed copyright for maximum transparency. Equally so in the present case. Mr.Harishankar would confirm the position that the entire repertoire of the plaintiff has been listed and uploaded in the website of the respondent.

11.Reliance was also placed on the decision of the

Division Bench of this Court in *Periyar Self Respect Propaganda Institution, represented by its Secretary Thiru K.Veeramani Vs. Periyar Dravidar Kazhagam, represented by its President T.S.Mani*, (2010-3-L.W.736) wherein, in para 6, this court has considered the necessity and appropriateness of the party seeking impleadment. Such necessity would also arise in a case where the absence of the party would result in the court not being able to adjudicate upon the matter in an effective manner. He would also rely on the decision of this court in *Sivaram and another vs Gananaajyothi and others* (2008(6) CTC 114), particularly 14 extracted below:

14.While deciding the question of adding certain parties in the Suit, the Court should find whether the relief prayed for in the Suit or the lis involved in the Suit could be decided without the addition of the impleading parties. If the answer is 'yes', the parties need not be impleaded as it is settled law that the plaintiffs as dominus litus could decide against whom he/she could file the case. As rightly pointed by the learned counsel for the revision petitioners, if clarifications are necessary with regard to the involvement of the revision petitioners in the impugned sale, they could be summoned as witnesses and the Trial Court is wrong in impleading them as defendants in the Suit.

The provisions of section 61 of the Copyright Act read thus:

61. Owners of copyright to be party to the proceeding.

(1) In every civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee.

12. In this case, PPL as dominus litis has named as defendants those entities which, according to it, are engaging in acts of infringement of its copyright. Nothing has been stated or brought on record to convince me that the SIHRA is a party, necessary or proper to the present proceedings and I find that the issue raised in the matter could well be decided without the presence of the SIHRA. The impleading application is dismissed.

Sd/-A.S.M.J

04.08.2017

//Certified to be a true copy//

Dated this the th day of 2017.

EM/26.09.2017

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