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

+ **CS(COMM) 7/2017**

SUPER CASSETTES INDUSTRIES PVT LTD Plaintiff

Through: **Mr.K.K. Khetan, Advocate**

versus

DIGIANA INDUSTRIES PVT LTD

@ DIGIANA PROJECT PVT LTD

..... Defendant

Through: **None**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

01.12.2017

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1. The plaintiff has instituted this Suit to restrain the defendant from infringing the copyright of the plaintiff in musical and literary works and for ancillary reliefs of rendition of accounts, damages, delivery, etc.
2. The Suit was entertained and, while issuing summons of the Suit and notice of the application, vide *ex parte* ad interim order dated 3rd January, 2017, the defendant restrained from authorising, recording, distributing, broadcasting, public performances/communication to the public or in any other way exploiting the cinematograph films, sound recordings and/or literary works (lyrics) and musical works (musical composition) or other work owned by the plaintiff.
3. The counsel for the defendant appeared before this Court on two dates but neither filed any written statement nor appeared thereafter and the defendant was vide order dated 13th July, 2017 proceeded against *ex parte*

and *ex parte* ad interim order confirmed and the plaintiff ordered to lead *ex parte* evidence.

4. Though an application of the defendant for condonation of delay in filing the written statement came up before this Court thereafter and notice of the said application was also ordered to be issued, but the defendant again did not appear and the said application was also dismissed for non-prosecution.

5. The plaintiff, in its *ex parte* evidence, has examined Mr. Anil Maini, its Authorized Representative and on request of the counsel for the plaintiff that the plaintiff wanted to examine one more witness, opportunity therefor was granted and the Suit is posted before the Joint Registrar for the said purpose on 29th January, 2018.

6. The Suit is listed today in terms of an earlier order, in the expectation that the recording of *ex parte* evidence would be completed by today.

7. The counsel for the plaintiff states that the plaintiff has to examine its investigator whose affidavit by way of examination in chief was filed but since he has left the services of the plaintiff, the plaintiff has to pursue him to depose.

8. Having gone through the papers and having found the plaintiff entitled to the relief of injunction as claimed, the need for the plaintiff to examine the investigator in support of the said relief is not felt and I have enquired from the counsel for the plaintiff as to what is the evidence which has been led by the plaintiff in support of its claim for damages.

9. The counsel for the plaintiff states that he has argued another matter of the plaintiff before Hon'ble the Judge-in-charge and the plaintiff in that

case, which was also *ex parte*, has been awarded damages of Rs.16,20,000/- besides costs of Rs.20,000/-. However, the counsel for the plaintiff is not carrying with him the said judgment.

10. Suits cannot be kept pending in this fashion.

11. I have examined the evidence of PW1 and am of the view that on the basis thereof, the plaintiff can only be entitled to damages assessed considering that the defendant merely by choosing to be proceeded against *ex parte* and continuing the said infringing activities in another name, cannot be permitted to go scot free. However, no case of damages in the sum of Rs.1 Crore as claimed or crystallized at any other amount indicative of the damage suffered, is made out.

12. A decree is thus passed in favour of the plaintiff and against the defendant (i) of permanent injunction in terms of prayer paragraph (i) of the plaint dated 16th December, 2016; (ii) of recovery of damages in the sum of Rs.5,00,000/-; and (iii) of costs; counsel's fee assessed at Rs.20,000/-.

13. Decree sheet be prepared.

14. The date of 29th January, 2018 before the Joint Registrar stands cancelled.

RAJIV SAHAI ENDLAW, J

DECEMBER 01, 2017
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