

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

% **Date of decision: 8th March, 2018.**

+ **CS(COMM) 173/2018 & IAs No.11660/2017 (u/O XV-A CPC),
3838/2014 (u/O XXXIX R-2A CPC) & 23764/2014 (u/O VII R-1
CPC)**

SUPER CASSETTES INDUSTRIES LTD. Plaintiff

Through: Ms. Prachi Agarwal, Mr. K.K. Khetan
and Ms. Mrinali Menon, Advs.

Versus

DARSH DIGITAL NETWORK PVT LTD Defendant

Through: Mr. Vipul Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. IA No.23764/2014 of the plaintiff for change of name of the plaintiff from Super Cassettes Industries Ltd. to Super Cassettes Industries Pvt. Ltd. is allowed and disposed of.

2. The plaintiff has instituted this suit for permanent injunction restraining the sole defendant, Darsh Digital Network Pvt. Ltd., a Multi-System Operator (MSO) within the meaning of Section 2(c) of the Cable Television Networks Rules, 1994, from infringing the copyright of the plaintiff in certain musical and literary works and for ancillary reliefs of rendition of accounts and delivery.

3. The suit was entertained and vide *ex-parte* ad-interim order dated 14th August, 2012, the defendant restrained from engaging in or authorising the recording, distributing, broadcasting, public performance/communication to

the public or in any other way exploiting the cinematograph films, sound recordings and/or literary works and/or musical works or other works or part thereof owned by the plaintiff, without obtaining a prior licence from the plaintiff. This order was confirmed on 8th February, 2013.

4. The defendant contested the suit and on the pleadings of the parties, the following issues are framed on 10th January, 2014:

- “(i) Whether the plaint is liable to be rejected under Order VII Rule 11(a) CPC? OPD*
- (ii) Whether the suit is barred under Section 33 of the Copyright Act, 1957? OPD*
- (iii) Whether the plaintiff is the owner of copyright in its repertoire of works including sound recordings, cinematograph films and underlying musical and literary works? If so, to what effect? OPP*
- (iv) Whether the defendant has infringed the plaintiff's copyright in sound recordings, literary works and/or musical works and cinematograph films by broadcasting/communicating to the public the said works on programmes broadcasted on its cable network channel without a license? If so, to what effect? OPP*
- (v) If the answer to issue No.(ii) is in negative and issue Nos.3 and 4 is in affirmative, whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- (vi) Whether the plaintiff is entitled to damages? If so, at what rate and what quantum? OPP*
- (vii) Whether the plaintiff is entitled to interest on damages? If so, at what rate and for what period? OPP*
- (viii) Relief.”*

5. The parties have led their respective evidence and the suit is ripe for final hearing.

6. I have enquired from the counsel for the defendant, the defence to the suit.

7. The counsel for the defendant states that the defendant, at the time of institution of the suit, was a Local Cable Operator (LCO) but is now an MSO and only supplies bandwidth/frequency to the other cable TV operators and the defendant has not violated the copyright of the plaintiff and it is the cable TV operators, with whom the defendant has agreements, who have on their own broadcasted the works aforesaid in which the plaintiff has a copyright and the defendant is thus not liable for any damages.

8. I have enquired from the counsel for the defendant, whether the defendant in view of the statement made today, has any objection to suffering a decree for permanent injunction as claimed by the plaintiff in prayer paragraph 38(i) of the plaint dated 7th August, 2012.

9. The counsel for the defendant states that he has no objection.

10. The counsel for the plaintiff states that the very statement by the counsel for the defendant today, of the defendant at the time of institution of the suit being an LCO, falsifies the defence argued. It is contended, that the plaintiff in its evidence has proved screen shots of the broadcast by the cable TV operators with whom the defendant has agreements and which broadcast shows the logo of the defendant on the works of the plaintiff being broadcasted. It is stated that the same proves that the broadcast of the works in infringement of the copyright of the plaintiff is through the bandwidth/frequency supplied by the defendant to the cable TV operators

with whom the defendant has a contract as else the logo of the defendant could not have appeared as is visible in the screen shots. It is yet further contended that the defendant is also in violation of the interim order in this suit and qua which IA No.3838/2014 under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 is pending and in response to which the defendant has taken a stand of the defendant having informed its employees to, in future, not broadcast the works in which the plaintiff has a copyright, through the bandwidth/frequency transmitted by the defendant. It is thus contended that the defendant has admitted the violation.

11. It is also informed that the defendant has led no evidence to the contrary.

12. I have enquired from the counsel for the defendant, whether the defendant has led any evidence explaining the presence of the logo of the defendant in the broadcast if done by the cable TV operators having agreements with the defendant themselves.

13. The counsel for the defendant states that no such evidence has been led.

14. The counsel for the defendant at this stage also states that the defendant, in addition to suffering a decree for permanent injunction, will also pay a lump-sum compensation of Rs.5 lakhs to the plaintiff.

15. The counsel for the plaintiff states that the plaintiff would be agreeable thereto, subject to the defendant, besides suffering a decree, also give undertaking to this Court to pay the said sum of Rs.5 lakhs and the costs of the suit.

16. The counsel for the defendant states that he, on behalf of the defendant and Mr. Sushil Kumar, Director of the defendant, gives an undertaking to this Court to pay the sum of Rs.5 lakhs to the plaintiff through counsel on or before 10th April, 2018 along with consolidated costs of Rs.1 lakh.

17. The undertaking aforesaid is accepted and the defendant and its Directors including Mr. Sushil Kumar are ordered to be bound therewith and cautioned through counsel of consequences of breach of undertaking given to the Court.

18. In view of the aforesaid, the need to return issue-wise findings is not felt.

19. Accordingly, a decree is passed in favour of the plaintiff and against the defendant (i) of permanent injunction in terms of prayer paragraph 38(i) of the plaint dated 7th August, 2012; (ii) of recovery of Rs.5 lakhs by way of compensation/damages; and, (iii) of consolidated costs of Rs.1 lakh.

20. It is made clear that in the event of breach by the defendant and its Directors including Mr. Sushil Kumar of the undertaking furnished to the Court, the plaintiff, besides, proceeding against the defendant and its Directors including Mr. Sushil Kumar therefor, shall also be entitled to immediately execute the decree.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MARCH 08, 2018

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