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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 385/2016, IA No.4852/2016 (u/O XXXIX R-1&2 CPC),
IA No.13380/2018 (u/S 151 CPC), CCP(O) No.3/2017 & IA
No.15447/2018 (u/S 151 CPC)
NOVEX COMMUNICATION PRIVATE LIMITED Plaintiff
Through: Mr. Jasdeep Singh Dhillon, Adv.
Versus
THE ROYAL PLAZA & ANR Defendants
Through: Mr. Kush Sharma, Mr. Ekant Luthra
& Ms. Asiya Khan, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.11.2018**

1. The plaintiff instituted this suit against defendant no.1 Royal Plaza Hotel, New Delhi and defendant no.2 Surya Leisure Pvt. Ltd., Delhi operating a club within the premises of Royal Plaza Hotel, New Delhi, for permanent injunction restraining the defendants from infringing the copyright of the plaintiff by communicating the sound recordings of the film songs in which the plaintiff claimed copyright, and for ancillary reliefs.
2. The suit came up first before this Court on 22nd April, 2016 when, while issuing summons thereof, vide *ex parte* order the defendants were restrained from communicating to the public or the patrons of their hotel / club, the film songs in which the plaintiff claimed copyright.
3. Only the defendant no.1 appeared in response to the summons issued and filed written statement to which replication has been filed by the plaintiff. The defendant no.2 Surya Leisure Pvt. Ltd. failed to appear despite service and did not file written statement and vide order dated 9th May, 2018, was held liable to be proceeded against *ex parte*.

4. The applications of the plaintiff for interim relief and for violation by both the defendants of the interim order and for substitution of the authorized representative of the plaintiff and the application of the defendant no.1 for placing on record Settlement Agreement dated 27th December, 2017 are for consideration.

5. The defendant no.1 along with its application being IA No.15447/2018 has filed photocopy of a Settlement Agreement dated 27th December, 2017 executed by the plaintiff and the defendant no.1 and in pursuance whereof it was agreed that the parties will make a statement in this suit before this Court also. The said Settlement Agreement also has a Annexure-I thereto, though not referred to in the body of the Settlement Agreement.

6. The counsel for the defendant no.1 has contended that the plaintiff, notwithstanding the said Settlement Agreement having been executed on 31st July, 2018, stated before this Court that there was no settlement between the parties.

7. The counsel for the plaintiff, on enquiry whether such a Settlement Agreement was executed, though replies in the affirmative but states that the defendant no.1 failed to abide by the terms of the Settlement Agreement and owing whereof the plaintiff, vide its letter dated 3rd November, 2018 had terminated the said Settlement Agreement, as the plaintiff was entitled to under the Settlement Agreement also. Copy of the letter dated 3rd November, 2018 is handed over in the Court and taken on record. It is informed, that though under the Settlement Agreement the defendant no.1 was liable to take a licence from the plaintiff but did not take any such licence and on the

contrary continued to violate the interim order in this suit.

8. The counsel for the defendant no.1 states that the defendant no.1 has already paid the sum of Rs.1 lac which it was liable to pay under the Settlement Agreement (and receipt whereof is admitted by the counsel for the plaintiff) but has not taken the licence because the defendant no.1 is not communicating to the public the film songs in which the plaintiff claims copyright. It is further stated that the defendant no.1 has pleaded so in the written statement as well and the amount of Rs.1 lac was paid for the past violations.

9. Once the plaintiff also admits that the disputes subject matter of the suit were settled in terms of the Settlement Agreement, the cause of action for the suit dissipated and the claim if any of the plaintiff against the defendant no.1, of breach of the Settlement Agreement, cannot be subject matter of this suit and the plaintiff, if so desires, has to institute a fresh suit therefor.

10. The counsel for the plaintiff states that while disposing of the suit in terms of the Settlement Agreement, a decree for permanent injunction as claimed be also passed against the defendant no.1.

11. The counsel for the defendant no.1 has no objection thereto.

12. As far as the defendant no.2 is concerned, it is now proceeded against *ex parte*.

13. The defendant no.2 having chosen not to contest the suit, the plaintiff, on the basis of pleadings and the documents, is found entitled to a decree for permanent injunction against the defendant no.2 as well and the need to relegate the plaintiff to *ex parte* evidence against the defendant no.2 is not

felt in the light of *Satya Infrastructure Ltd. Vs. Satya Infra & Estates Pvt. Ltd.* 2013 SCC OnLine Del 508 followed in *Dara Projects Private Limited Vs. Business India Exhibitions Pvt. Ltd.* 2017 SCC OnLine 8069 and *Kanungo Media (P) Ltd. VS. RGV Film Factory* 2017 SCC Online Del 8763.

14. As far as the application of the plaintiff for violation of the interim order by the defendant no.1 are concerned, since the settlement was admittedly arrived at between the parties, the said application also does not lie.

15. A decree is accordingly passed, in favour of the plaintiff and (i) against the defendant no.1 in terms of Settlement Agreement dated 27th December, 2017 along with Annexure-I thereto and of permanent injunction in terms of para no.39(A) of the plaint; and, (ii) against the defendant no.2, of permanent injunction in terms of para No.39(A) of the plaint.

16. Need to award any other relief to the plaintiff against the defendant no.2 is not felt.

17. Parties to bear their own costs.

18. Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 15, 2018

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