

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

COMMERCIAL I.P.SUIT NO.1 OF 1986

Universal Music (India) Pvt. Ltd.)....Plaintiff

V/s.

Super Cassettes Industries Pvt. Ltd. & Ors.)....Defendants

Mr.Sandeep Parikh a/w Mr.Ayaz Bilawal and Ms.A.Sayed I/by
M/s.Bilawala and Co. for plaintiff.

[Ms.Sanjana Chatterjee-authorized signatory of plaintiff present].

Dr.Abhinav Chandrachud a/w Ms.Mahi Lalka and Mr.Pravin Singh
I/by Ashok Singh for defendant no.1.

[Mr.Ajeet Kohil-Principal Officer/General Manager & authorized
signatory of defendant no.1 present in Court].

CORAM : K.R.SHRIRAM,J

DATE : 20.6.2019

P.C.:-

1. At the outset, Mr.Parikh appearing for plaintiff states that
plaintiff is pressing for reliefs only in terms of prayer clauses-(a), (b)
and (d) which read as under :-

*“(a) That it be declared that the plaintiffs are the
exclusive owners and/or assignees of the copy-rights in
the said musical works namely in the songs and/or lyrics
and/or music forming part of the cinematograph film*

entitled 'Janbaaz' produced by Defendant No.3 and 4 and recorded on the sound track thereof and as such they are exclusively entitled to the license the said musical works, including for the purpose of making of records and/or manufacture of records, tapes, and/or pre-recorded cassettes containing the said musical works to the exclusion of all others ;

(b) That it be declared that Defendants No.3 and 4 have no right to issue any license and/or permission to record the said musical works or any part thereof and/or manufacture any records, tapes, and pre-recorded cassettes containing the said musical work to any one, including under provisions of Section 52 (1) (d) of the Copy Right Act, 1957 ;

(d) That Defendant No.3 and 4 by themselves, their servants and agents be restrained by a permanent injunction of this Hon'ble Court from holding themselves out as the owners of the copy-rights in the said musical works including the records, and/or permit any one to record the said musical works or any part thereof and/or manufacture of records, tapes and pre-recorded cassettes containing the said musical works.

2. At the outset, Mr.Parikh states that in prayer clause-(b) a typographical error has crept in as much as in the provision of Copy Rights Act 1957 it should be section 52(1) (j) and not section 52 (1) (d). Mr.Parikh seeks leave to amend prayer clause. Dr.Chandrachud for defendant no.1 has no objection. I also find in paragraph-19 of the plaint, reference is to section 52 (1) (j) and not (d). Therefore,

leave to amend granted. Amendment to be carried out forthwith. Re-verification dispensed with.

3. Mr.Parikh states that defendant no.4 has died and plaintiff do not wish to prosecute the suit against the legal heirs of defendant no.4.

As regards defendant no.2, Mr.Parikh states that plaintiff do not wish to prosecute the suit against defendant no.2. Therefore, suit as against defendant nos.2 & 4 stands dismissed as withdrawn.

4. As regards defendant no.1, Mr.Parikh states that plaintiff and defendant no.1 have entered into consent terms signed by the authorized signatory of plaintiff and authorized signatory of defendant no.1 and their respective advocates. The same is taken on record and marked 'X' for identification. Counsel state that signatories to the consent terms are present in Court and identify by them. For ease of reference, the consent terms is scanned and reproduced hereinunder :-

X¹ 2
20.6.19

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
(IN ITS COMMERCIAL DIVISION)

COMMERCIAL I.P. SUIT NO. 1 OF 1986

Universal Music (India) Pvt. Ltd. Plaintiff

Versus

1. Super Cassettes Industries Ltd.)
2. Sapna Mukherjee)
3. F.K. Films Pvt. Ltd.) Defendants

**CONSENT TERMS BETWEEN PLAINTIFF AND
DEFENDANT NO.1**

The Plaintiff and the Defendant No.1 have arrived at an amicable settlement and are desirous of recording the same as follows :-

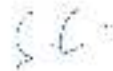
(a) By consent of the Plaintiff and the Defendant No.1, the present suit is decreed in terms as set out below :-

(i) Agreed, ordered and decreed that the Plaintiff is the exclusive owner and/or Assignee of the

[Signature] S.C.

copyrights in the musical works, namely in the songs, and/or records and/or music forming part of the cinematograph film titled "Janbaaz" produced by the Defendant No.1 and recorded on the sound track thereby and as such they are exclusively entitled to license the said musical works including for the purpose of making of records and/or manufacturing of records, tapes and/or pre-recorded cassettes and in any digital form or media containing the said musical works to the exclusion of all others:

- (ii) Agreed, ordered and declared that the Defendant No.1 and its Directors, officers, employees, servants and agents are restrained by an order of permanent injunction of this Hon'ble Court from infringing in any manner the Plaintiff's copyright in the musical work, namely in the songs and/or lyrics and/or music forming part of the cinematograph film titled "Janbaaz" by recording and/or causing to record the musical work or any part thereof and/or from manufacturing records, tapes and pre-recorded cassettes and in any other digital form or media and/or marketing and/or



selling the same containing the said musical works;

- (iii) Plaintiff and Defendant No.1 to bear their own costs in the suit.

Dated this 20th day of June, 2019

Sanjana Chatterjee
Plaintiff
Sanjana Chatterjee
 (Authorized Signatory of Plaintiff)

[Signature]
 (M/s. Bhatnagar & Co.),
 Advocates for the Plaintiff

[Signature]
Defendant No.1
(ASIT KAPU)
 (Authorized Signatory
 for Defendant No.1)

[Signature]
 Advocates for Defendant No.1

5. Suit accordingly stands decreed against defendant no.1.

Drawn up decree dispensed with.

6. Now the only defendant left is defendant no.3. At the outset I have to note that defendant no.3 has not filed any written statement. Defendant no.3, however, was permitted to cross-examine plaintiff's witness.

7. It is the case of plaintiff that by an agreement in writing dated 11.12.1984 (Exh.P-3) defendant no.3 sold and assigned in favour of plaintiff for a valuable consideration the copy right in songs, lyrics and music recorded for the purposes of being incorporated and/or incorporated on the sound track of a film titled "Janbaaz" produced by defendant no.4. On the execution of Exh.P-3, plaintiff manufactured, record and tapes and prerecorded cassettes containing the said musical works for the purposes of sale in the market all over India contemporaneously with the release of the film 'Janbaaz'. Plaintiff also gave vide publicity to the release of the said records, pre-recorded cassettes and tapes manufactured and produced by them.

8. Sometime on or about 20.5.1986 plaintiff learnt that defendant no.1 was attempting to release a cover version of the musical works by the end of May-1986 without necessary license or permission from plaintiff as assignee/owner of the copy rights of the musical works of the film `Janbaaz'. Plaintiff therefore, immediately by two letters both dated 20.5.1986 (Exh.P5 and Exh.P6) called upon defendant nos.1 & 3 not to release or allow anyone to release cover versions of any film as per the resolution dated 7.4.1986 passed by all India Film Producer Council. No reply was received from defendant no.1 and/or 3 and therefore, plaintiff sent telegrams dated 27.5.1986 (Exh.P7 & Exh.P8, respectively), advising defendant nos.3 and 4 not to permit defendant no.1 to release the cover version. However, defendant no.3 failed and neglected to even send reply. According to plaintiff, despite being informed, defendant no.3 went ahead and even caused advertisement to be released in newspapers and distributed hand bills from which it became evident that defendant no.3 had manufactured records, tapes and prerecorded cassettes of the said film though the ownership rights were with plaintiff. In the plaint it is stated that defendant no.3 never responded to any of the correspondence but continued to infringe plaintiff's rights and therefore, plaintiff was compelled to file the suit.

9. Written statement was filed only by defendant no.1. Issues were framed on 26.4.2006 which read as under :-

“(1) Whether the Defendant No.1 proves that the present suit is filed only as a counter-blast to the Suit No.149 of 1986, filed by the Defendant No.1 in the Court of the District Judge, Delhi as alleged in paragraph No.1 of the Written Statement ?

(2) Whether the Defendant No.1 proves that there is no infringement of copyright of the Plaintiffs in as much as the first owner of the copyright i.e., Defendant Nos.3 and 4 have consented to the Defendant No.1 to make cover version of the song and music of the musical works recorded in the music cassettes in respect of film “JANBAAZ” as alleged in paragraph 4 of the Written Statement ?

(3) Whether the Defendant No.1 proves that the oral inquiry of the Defendant No.1 elicited an oral response from the Plaintiffs to the effect that the copyright owner in the musical work incorporated in the music cassette of the film 'JAANBAAZ” was the Defendant No.3 hereinafter as alleged in paragraph 11 of the Written Statement ?

(4) Whether the Defendant No.1 proves that there was/is an implied consent by the first owner of the copyright permitting/allowing the Defendant No.1 to make cover versions of the songs, music and musical works recorded in the music cassettes of the film “JAANBAAZ” made by the Defendant No.3 and/or Defendant No.4 as alleged in paragraph No.12 of the Written Statement ?

(5) Whether the Plaintiffs prove that the Resolution dated 7th April 1986 passed by All India Film Producers Council is not of binding on the Defendant No.1 ?

(6) Whether the Plaintiffs prove that the Agreement dated 11th December 1984 at Exhibit “A” to the Plaint

and mentioned in paragraph 3 of the Plaint is valid, binding and subsisting ?

(7) Whether the Plaintiffs prove that the Defendant No.1 entered into a conspiracy to coerce Defendant Nos.3 and 4 to assign for their benefit copyrights to record the said musical works and/or to make records and/or tapes and/or pre-recorded cassettes and/or reproduce the said musical works and/or market the same and/or reproduce the said musical works for the purpose of the sale, thereby infringing the copyright which was vested exclusively in the plaintiffs as annexed in paragraph 11 to the plaint ?

(8) Whether the Plaintiffs prove that the Defendant No.1 committed infringement of the copyright vested in the Plaintiffs as stated in paragraph 8 of the Plaint ?

(9) Whether these Defendant Nos.3 and 4 authorised the Defendant No.1 to record musical work forming part of film "JAANBAAZ" to produce tapes, pre-recorded cassettes and to reproduce the work ?

(10) Whether the Plaintiffs prove that by an agreement dated 19th March 1986, the Defendant No.2 agreed to render exclusive services to the Plaintiffs as stated in paragraph 10 of the plaint ?

(11) Whether the suit is liable to be stayed till disposal of the Suit No.149 of 1986 filed by Defendant No.1 against the Plaintiffs in the Court of the Additional District Judge, Tis Hazari, New Delhi ?

(12) What order and decree ?

10. Plaintiff led evidence of one witness S.P.Sharma (PW-1).
 Defendant no.1 also led evidence of one witness Ajit Kohli (DW-1).
 Defendant nos.2 & 4 did not participate even in the cross-examination

but defendant no.3 who has not even filed written statement, did not lead any evidence but cross-examined plaintiff's witness.

11. The following question and the answer thereto in the cross-examination of PW-1 by the counsel for D3 is very relevant and the same read as under :-

Q.4 : *As the owner/assignee of the copyright in respect of the suit film, is it not your duty to protect your rights under the Copyright Act ?*

Ans. : Yes.

By this question no.4, defendant no.3 has admitted that plaintiff is the owner/assignee of the copy rights in respect of the suit film. In prayer clause-(a) plaintiff is seeking a declaration that plaintiff is the exclusive owner and/or assignee of the copy rights in the musical works of the said film 'Janbaaz'. The suit is being proceeded only against defendant no.3. In this question defendant no.3 has admitted that plaintiff is the owner/assignee of the works in the said film 'Janbaaz'. Therefore, prayer clause-(a) as against defendant no.3 has to be granted and is hereby granted.

12. Prayer clauses-(b) and (d) are only reliefs which are

consequent to prayer clause-(a). Only the owner/assignee has a right to issue any license and/or permission to record its musical works or any part thereof. Only owner can hold itself out as owner of the copy rights and nobody else. Therefore, in view of the admission of defendant no.3 that plaintiff is the owner/assignee of the musical rights of the film 'Janbaaz' , it will be only plaintiff who can issue any license and/or permission to record musical works of the film 'Janbaaz' and it is only plaintiff who can hold out as the owner of the copy rights of the musical works.

13. In the circumstances, suit stands decreed as against defendant no.3 in terms of prayer clauses-(a), (b) & (d) which are reproduced at the beginning of this judgment.

14. All issues are answered accordingly.

(K.R.SHRIRAM,J)