

CR No.7379 of 2019
DATE OF DECISION:26.11.2019

M/s Phonographic Performance Limited

...Petitioner/plaintiff

Vs.

M/s Purple Frog and another

...Respondents/defendants

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Present: Ms. Kanwal S. Walia, Advocate
for the petitioner/plaintiff.

LALIT BATRA, J. (Oral)

Present revision petition has been filed by petitioner/plaintiff impugning the legality of orders dated 29.10.2019 (Annexure P-2) rendered by trial Court, in terms of which, vide initial order dated 29.10.2019, evidence of petitioner/plaintiff was closed by Court order and thereafter application moved on the same day by petitioner/plaintiff for grant of opportunity to lead evidence, was dismissed, vide subsequent order dated 29.10.2019.

2. Briefly stated, the petitioner/plaintiff has filed civil suit seeking relief of perpetual injunction under Section 55 of The Copyright Act, 1957, against respondents/defendants, thereby restraining respondent No.1/defendant No.1 from infringement of copyrights vested in the plaintiff and for rendition of accounts. In the above said civil suit, respondent No.1/defendant No.1 had failed to put in appearance in trial Court and, thus, said defendant was proceeded *ex parte*, vide order dated

27.12.2017. On 27.05.2019 and 19.09.2019, plaintiff had tendered some documents in its evidence and thereafter case was adjourned to 29.10.2019 for its *ex parte* evidence. However, on that date of hearing, plaintiff could not conclude its evidence and, thus, evidence of plaintiff was closed by Court order. Immediately thereafter, plaintiff had moved an application for grant of opportunity to conclude its evidence, which was dismissed by the trial Court, vide impugned order dated 29.10.2019 and then case was adjourned to 13.11.2019 for arguments.

3. Learned counsel for the petitioner/plaintiff at the very outset has argued that the impugned orders dated 29.10.2019 are not sustainable in the eyes of law as petitioner/plaintiff could not get requisite opportunity to conclude its evidence.

4. I have heard learned counsel for the petitioner/plaintiff and have carefully gone through the record of the case.

5. Under Article 227 of the Constitution of India, the powers can always be exercised to correct an error in the order of the trial Court which causes injustice to a party. In the present case, while closing the evidence of petitioner/plaintiff and further rejecting the application of petitioner/plaintiff for grant of opportunity for leading evidence, the trial Court has shut a material piece of evidence sought to be led by petitioner/plaintiff.

6. In the given circumstances of the case, to impart complete justice to the parties, it would be appropriate, if adequate opportunity, is

provided to petitioner/plaintiff to lead its evidence.

7. As a sequel to above discussion, instant civil revision petition is allowed. Impugned orders dated 29.10.2019, rendered by trial Court while closing evidence of petitioner/plaintiff and further declining its application for grant of opportunity to lead evidence, are set aside. Resultantly, application for grant of opportunity to petitioner/plaintiff to lead evidence, is allowed. Trial Court is directed to provide two effective opportunities to petitioner/plaintiff to produce and conclude its entire evidence and the first opportunity in this regard shall commence with effect from 16.01.2020.

8. Allowed accordingly.

(LALIT BATRA)
JUDGE

26.11.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No