

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.Nos.167 and 210 of 2020

O.S.A.No.167 of 2020:

Sony Music Entertainment India Pvt. Ltd,
92, Main Avenue, Santa Cruz (West),
Mumbai-400 045.

...Appellant

Vs.

1.S.Khaja Mohideen
Proprietor,
Bayshore Records,
37, Wallers Road,
Anna Salai, Chennai-600 002.

2.S.S.Chakravarthy,
Proprietor
M/s. Nic Audio,
No.6, Raman Street,
T.Nagar, Chennai-600 017.

...Respondents

PRAYER: O.S.A.No.167 of 2020 filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 04.02.2020 passed in O.A.No.295 of 2019 in C.S.No.207 of 2019.

Prayer in O.A.No.295 of 2019:

Original Application praying that this Hon'ble Court be pleased to grant an and interim injunction restraining the Respondent from in any manner infringing the Applicant's copyrights viz the entire audio copyrights in the sound recordings in the film set out in the Schedule to the Judge's Summons in terms of the agreement dated 18/02/2004 for a perpetual period pending disposal of the suit.

O.S.A.No.210 of 2020:

R.Ayubkhan

...Appellant

Vs.

1. S.Khaja Mohideen
Proprietor,
Bayshore Records,
37, Wallers Road,
Anna Salai, Chennai-600 002.
2. Sony Music Entertainment India Pvt. Ltd.,
92, Main Avenue,
Santacruz (West),
Mumbai - 400 054.
3. S.S.Chakravarthy,
Proprietor of Nic Arts,
No.1, Senthil Andavar Street,
Dhanalakshmi Colony,
Vadapalani,
Chennai - 600 026.

...Respondents

Prayer: O.S.A.No.210 of 2020 filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the order dated 04.02.2020 passed in O.A.No.921 of 2019 in C.S.No.596 of 2019.

Prayer in O.A.No.921 of 2019:

Judge's summons filed under order XIV Rule 8 of Original Side Rules read with order XXXIX Rules 1 & 2 of C.P.C.

To grant an interim injunction restraining the 1st and 2nd Respondents/Defendants, their men, agents, successors- in-business, assigns, representatives or any person claiming through or under them from in any manner exploiting and/or infringing the Applicant/Plaintiff's sole and exclusive rights in the Sound Track, background Music, Sound recordings, underlying musical works and lyrical works, in the songs comprising the entire worldwide audio rights in the movie titled "CITIZEN"

For Appellant : Mr.M.V.Swaroop
in O.S.A.No.210/2020

For Appellant : Mr.P.S.Raman
in O.S.A.No.167/2020 Senior Counsel
and respondent No.2 for M/s.Abishek Jenasenan
in O.S.A.No.210of 2020

For Respondents : Mr.K.Harishankar
for respondent No.1
in both appeals

: M/s.Brindha
for M/s.Durga V.Bhatti
for respondent No.2
in O.S.A.No.167 of 2020
and respondent No.3
in O.S.A.No.210 of 2020

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

These two appeals arise out of a common final interlocutory order in two actions for infringement of copyright. In the earlier suit, C.S.No.207 of 2019, instituted by S.Khaja Mohideen, the subject-matter pertains to the musical works in 17 cinematograph films. In the later suit, C.S.No.596 of 2019, filed by R.Ayubkhan, the claim is on account of the music pertaining to a film by the name of "Citizen".

2. There is a lot of confusion which is created by the incomplete papers executed by the parties and the rather haphazard presentation thereof in the Court. Further, the usual cavalier practice in the film industry or the music trade is also evident from the possible duplication of documents, apparent creation of rights without reference to previous assignments and licence and the like. However, at the end of the day, for a plaintiff to obtain an interlocutory injunction, it must show a strong prima facie case and the balance of convenience being in favour of the orders sought.

3. It needs to be clarified at the outset that legal jargons like "prima facie case" and "balance of convenience" need not be expressly mentioned in any interlocutory judgment or whatever is the result of any interim adjudicatory process undertaken, as long as the sense in either case is made out by cogent reasons being indicated in such regard. In other words, by the mere use of the expression "prima facie case" all over an interlocutory order, the order may not be justified; nor will the lack of the use of the expression render the order vulnerable if the essence of a prima facie case is discerned therefrom.

4. The other aspect that needs to be emphasised is that what really counts in the process of adjudication in a system governed by the rule of law is the reasoning which is indicated therein. As is often repeated, reasons are the link between the facts and the conclusion drawn on the facts by applying the relevant law to the prevalent facts. The journey from the bare facts to the hard order cannot be traversed - and, at any rate, is incomplete - without reasons being indicated in support of the order. Reasons reveal what impelled the judicial mind to

arrive at the conclusion by applying the relevant law to the facts at hand. Reasoned orders are the sine qua non for any respectable or acceptable system of adjudication.

5. Plaintiff Mohideen instituted the earlier suit in 2019 claiming that he had acquired the copyright in the music pertaining to several films from one S.S.Chakravathy who carried on business under the name and style of Nic Audio and also as Nic Arts. The plaintiff relies on an agreement of February 18, 2004 by which Nic Audio apparently assigned the musical works in 17 specified films in favour of Meta Audio, a proprietorship concern of the plaintiff. The grant is found in paragraph 2 of the document and provides that the assignee "shall have" the exclusive rights to, inter alia, manufacture, sell and distribute the sound recordings in various forms of the specified music "for entire Indian Territory for perpetual period of 99 years." Paragraph 3 of the agreement reveals a consideration of Rs.1 lakh.

6. According to the plaintiff, he entered into licence agreements with various parties, including Entertainment Network (India) Limited, a company that apparently owns the popular FM radio channel "Mirchi". In the relevant licence agreement of November 2, 2004, the plaintiff apparently granted licence through another proprietorship firm by name of Bayshore Records. However, the works for which the licence was granted by the said agreement are not apparent from the agreement or from any other document that the plaintiff has produced.

7. The plaintiff has also relied on a further licence agreement executed by him through his Bayshore Records with Malar Publications Limited. Interestingly, though the agreement is dated August, 14 and the stamp paper appears to have been purchased in the year 2006, the year is not apparent from the document. Also, the works covered by such licence agreement do not appear from any of the papers relied upon by the plaintiff.

8. The plaintiff next relies on the plaint relating to C.S.No.301 of 2006 that he filed against Sun TV Network Limited for the defendant in such action purporting to play music in which the plaintiff claimed copyright. An initial injunction was obtained by the plaintiff in such suit before the defendant entered into a licence agreement with the plaintiff that culminated in the suit being compromised. The licence agreement is dated June 14, 2006. It must be noticed that the schedule to the plaint in C.S.No.301 of 2006 indicated at least 112 films, including the 17 films which are the subject-matter of the present suit. The plaintiff, thus, asserts that it is evident that the plaintiff exercised exclusive ownership in respect of the music pertaining to the 17 films from 2004 and the plaintiff

had successfully asserted such rights in a suit instituted in this Court in the year 2006.

9. The plaintiff next relies on some documents that appear to be the covers accompanying compact discs. However, the plaintiff cannot immediately indicate the relevant numbers from such compact discs that are relatable to the 17 films in which the plaintiff claims exclusive copyright over music. Several documents have been relied upon by the plaintiff to demonstrate that the defendant Sony Music Entertainment Private Limited (hereinafter referred to as "Sony") has been offering music from 13 of the 17 films for being downloaded on the internet through music platforms like Wynk Music. The several pages relied upon by the plaintiff reveal the wide publicity given by the said defendant to its repertoire of Tamil film music, including 13 of the 17 films which form the subject-matter of the present suit.

10. The plaintiff asserts that since Sony also claims to have obtained the rights pertaining to 13 of the 17 films from Chakravarthy, who was the producer of the films, it is evident from the plaintiff's agreement of February 18, 2004 that the assignment of the relevant musical works qua the Indian territory had already been granted by Chakravarthy in favour of the plaintiff and, as such, the rights as assigned to the plaintiff were no longer available to Chakravarthy to part with in favour of any other. It is clarified that in the Tamil film industry and the music trade, the Indian territory covers all of India and overseas territories cover the rest of the world, including Sri Lanka. The plaintiff says that he instituted the suit only to protect his rights in India and the injunction that has been passed is limited to such aspect.

11. The principal defendant, Sony, is the primary appellant here in O.S.A.No.167 of 2020. Ayubkhan is the other appellant in O.S.A.No.210 of 2020, which is confined only to music pertaining to the film "Citizen".

12. Sony claims to have obtained the rights from several companies or concerns which had originally acquired the rights under written deeds of assignment from Chakravarthy, the first owner of the copyright as the producer of the relevant films. According to Sony, it expended lakhs and crores of rupees, though the considerations indicated in the several agreements relied upon have been redacted. Sony says that at or about the time that it acquired the copyright in the music pertaining to 13 of the 17 films along with hundreds of other films, it issued public announcements in the local trade journal covering the Tamil film and music industry. In August, 2011 Sony published a prominent advertisement in a leading newspaper to indicate that it was acquiring the rights in the musical works relating to

several films and inviting objections from any person who could be interested.

13. Sony relies on several licence agreements it has entered into with prominent parties in respect of Sony's repertoire, including the music pertaining to 13 of the 17 subject films which form part of what Sony describes in its documents as the Think Music catalogue. The documents pertaining to the acquisition or assignment of the Think Music catalogue have apparently been filed in this Court. Sony has also relied on previous suits instituted by it, inter alia, to protect its ownership of the music rights pertaining to 13 of the 17 films that form the subject-matter of the instant suit.

14. In particular, Sony says that it successfully obtained an interlocutory injunction against Sun TV, the same party against which the plaintiff herein had brought a previous suit. Sony is quick to point out that notwithstanding the licence agreement that the plaintiff brandishes as having executed with Sun TV, Sun TV did not rely thereupon to resist the injunction that it suffered in Sony's subsequent suit.

15. Sony also refers to the assignors assigning the licence agreements previously executed by the assignors in favour of Sony simultaneously with assigning their copyright in the related musical works in favour of Sony. One of such assignors had assigned the rights under a licence agreement with Malar Publications Limited. The document is dated August 18, 2011 and by such document Think Music calls upon Malar Publications Limited to acknowledge Sony as the subsequent owner of the copyright in the music originally licensed by Think Music in favour of Malar Publications Limited.

16. Sony says that it is inconceivable that both Sun TV and Malar Publications Limited would have different licence agreements pertaining to the same repertoire and would not protest the injunction or the letter from the assignor as evident from the records. According to Sony, it applied for Chakravarthy to be impleaded in the suit since both the plaintiff and Sony claim their rights from Chakravarthy and only Chakravarthy could clarify which of the parties had been conferred the rights. It also appears that after Chakravarthy was impleaded, he filed an affidavit to completely deny the agreement of February 18, 2004 relied upon by the plaintiff. In turn, Chakravarthy claimed that Chakravarthy had obtained some credit facilities from the plaintiff herein and the plaintiff had required Chakravarthy to sign some blank papers which plaintiff Mohideen may have later put to use to create the agreement.

17. The plaintiff in the later suit, Ayubkhan, has a completely different case. Ayubkhan claims to have obtained the musical rights pertaining to film "Citizen" from Nic Arts under an agreement of January 9, 2001. A copy of such agreement has been disclosed and the relevant agreement covers the overseas rights in the musical works relating to the film "Citizen" for which Ayubkhan apparently paid Rs.40 lakh to Nic Arts in 2001. Ayubkhan also relies on a letter dated January 9, 2001 of Nic Arts, apparently executed by Chakravarthy. Indeed, both the agreement of January 9, 2001 and the purported letter of January 9, 2001 are in favour of partnership firms by the names of Roja Audio and Roja Exports. Ayubkhan claims that both partnership firms were subsequently dissolved with Ayubkhan having the exclusive rights pertaining to the musical works in film "Citizen".

18. "Citizen" is one of the 17 films that the plaintiff in the earlier suit has referred to as part of the 17 films forming such plaintiff's repertoire. The copyright in the musical works pertaining to "Citizen" is also claimed by Sony by virtue of its deeds of assignment relied upon in the present proceedings. However, the agreement of January 9, 2001 that Ayubkhan relies on covers the musical rights for the overseas territories. The letter of January 9, 2001 covers the sound recording rights all over the world, except the audio cassette rights pertaining to the Indian territory.

19. The plaintiff in the earlier suit points out that the rights of the plaintiff in the later suit need to be confined, at best, to the agreement of January 9, 2001. Such plaintiff refers to the pre-suit cease and desist notice issued on May 10, 2019 on behalf of Ayubkhan in which there is only a reference to the agreement of January 9, 2001 without any reference to the letter of January 9, 2001. The plaintiff in the earlier suit responded to such notice on May 15, 2019 and, without prejudice to his rights and contentions, sought copies of the documents relied upon by Ayubkhan. Again, it appears that only the agreement of January 9, 2001 or a copy thereof was forwarded and no reference was made to the purported letter of January 9, 2001 apparently executed by Chakravarthy in favour of Ayubkhan. Indeed, the plaintiff in the earlier suit points out that even the agreement of January 9, 2001 may be suspect since the address of the proprietorship concern of Chakravarthy indicated therein is at variance with the address of the same proprietorship concern appearing in the purported letter of January 9, 2001.

20. By the judgment and order impugned dated February 4, 2020, the trial Court found that the plaintiff in the earlier suit was entitled to an order of injunction. The judgment is

singularly lacking in reasons for arriving at the conclusion and does not reveal any rational basis for the assessment. Though the judgment covers interlocutory applications in three suits, it ignores the claim of Ayubkhan despite apparently finding in favour of Ayubkhan. It must also be recorded that the matter pertaining to the third suit that was before the trial Court is not covered by the two appeals herein.

21. In the judgment preceding the operative part of the order of February 4, 2020, the rival contentions are recorded till paragraph 21. Thereafter, paragraph 22 refers to one aspect of the matter before the conclusion is indicated in paragraph 23 thereof:

"22. It is very peculiar to note that at one place, M/s.Sony Music Entertainment India Pvt. Ltd., in the counter says that S.S.Chakravarthi is producer of only 6 titles out of 17 titles which are the subject matter of the suit, whereas, S.S.Chakravarthi without any compunction, says that, he assigned the copyright for the movie CITIZEN to M/s.Roja Exports and the movie VILLAN, to M/s.Star Music during the production. Later got their No objection and sold it to Best Audio which in turn sold it to M/s.Think Music and M/s.Think Music inturn sold to M/s.Sony Music Entertainment India Pvt. Ltd. Whereas, both M/s.Roja Exports and M/s.Star Music, are ascertaining their right over the films "CITIZEN" and "VILLAN" respectively and have filed separate suits. Neither Mr.S.S.Chakravarthi nor M/s.Sony has placed the so called No objections given by M/s.Roja Exports or M/s.Star Music.

"23. In the light of the above contradictory stand taken by the original owner S.S.Chakravarthi and K.Mohaideen, this Court finds the plaintiff in C.S.No.207 of 2019, alone holds valid agreement of assignment at earliest point of time for the 17 movies."

22. The only reason that is indicated in the judgment needs to be addressed first before undertaking an independent assessment of the rival claims herein. It is true that Sony claimed that Chakravarthy may not have had the rights as the first owner of the copyright in any more than six of the 17 films which form the subject-matter of the present suit. However, Sony did not obtain the rights only from Chakravarthy. Sony claimed to have obtained the rights from its immediate predecessors, some of whom trace their rights to Chakravarthy. It was irrelevant, in the context of the interlocutory

application and without a full-fledged trial, that Sony had seen Chakravarthy's rights to be somewhat less than what may actually have been. The only basis for passing the order of injunction pales into insignificance when it is noticed that Chakravarthy himself asserted that he had assigned the rights in favour of the predecessors of Sony which, ultimately, came to be acquired by Sony. To repeat, Chakravarthy had also pleaded that he had not assigned any copyright in any musical works or film in favour of the plaintiff in the earlier suit, but had appended his signatures to certain blank pieces of papers which the plaintiff in the earlier suit may have subsequently put to use as pages of an agreement.

23. It is true that the plaintiff in the earlier suit, Mohideen, had instituted a suit against Sun TV in which the repertoire indicated included the 17 films. It is equally true that an initial order was passed against Sun TV in such suit and, ultimately, Sun TV entered into a licence agreement to exploit the rights in the music apparently owned by Mohideen, whereupon the suit came to be compromised and abandoned. However, merely because Sun TV may not have protested the rights asserted by Mohideen, does not make Mohideen's rights absolute or unquestionable. No more need be read into that action than the fact that a claim was lodged in this Court which culminated in a compromise. Even if the suit had been decreed upon contest, it may have had no bearing on the present matter, particularly since the plaint pertaining to the 2006 suit did not indicate the source of the plaintiff's rights or the person from whom the plaintiff acquired the same. If only a copy of the agreement of February 18, 2004 had been appended to the plaint in the Sun TV suit, some amount of credence could have been given to such document now, even in the wake of the critical stand taken by Chakravarthy in the present proceedings. Unfortunately, the document appears not to have been disclosed in course of the earlier suit; or, at any rate, the papers pertaining to such suit that had been relied upon by Mohideen here do not refer to the agreement of February 18, 2004.

24. Equally, if Malar Publications Limited had obtained the licence pertaining to Mohideen's alleged repertoire from Mohideen, there would be no need for some other licence agreement or Malar Publications Limited accepting the assignment made in 2011 in favour of Sony. It is possible that the repertoires could have been completely different, but there is no conclusive evidence in such regard, at least at the interlocutory stage.

25. Most importantly, it appears that these works are of some value. Though the suits instituted by Mohideen in 2006 and 2019, as in other copyright suits in this Court, were valued

merely on the basis of the declaration and injunction sought without any ad valorem value of the chose in action being indicated, it is evident from the serious nature of the contest, that the musical works are of considerable value and may have been worth and continue to be worth substantially more than the ostensible consideration of Rs.1 lakh recorded in the purported agreement of February 18, 2004. Though the money expended by Sony cannot be clearly ascertained at this stage with the figures redacted in some of the documents and the total consideration being in respect of a much larger repertoire than the limited number of films which form the subject-matter of the present action, it is also evident from Ayubkhan's agreement of January 9, 2001 that he paid Rs.40 lakh for obtaining the overseas copyright in the musical works of one film.

26. In the light of the categorical assertion of Chakravarthy that he had not granted any copyright in favour of Mohideen and in Mohideen's documents indicating the wide exploitation of the copyright in, inter alia, the music relating to 13 of the 17 films by Sony, it should have been difficult for any Court to completely prohibit Sony from continuing to exploit the copyright, particularly in the wake of the very limited case made out by Mohideen.

27. It cannot be said that no prima facie case was made out by the plaintiff; but it must also be acknowledged that the evidence relied upon by the plaintiff, prima facie, does not appear to be convincing for the wide exploitation of the copyright that Sony has embarked upon to be arrested without any condition being attached. In commercial matters, unless a watertight case is made out, where the consideration as to balance of convenience becomes irrelevant, a completely unconditional order can scarcely be issued. In the present case, the judgment and order of February 4, 2020 are founded on a contradiction that appears to be irrelevant in the context to result in a blanket injunction despite a rather feeble prima facie case having been made out by the plaintiff in the earlier suit.

28. A person claiming to be an assignee of copyright is entitled to an injunction covering the work as assigned, subject to satisfying the Court as to the assignment. Under Section 18 of the Copyright Act, 1957, the owner of the copyright in an existing work or the prospective owner of the copyright in any future work may assign the same wholly or partially and either generally or subject to limitations, for the whole term of the copyright or any part thereof. Section 19 of the said Act mandates that an assignment of copyright in any work must be in writing signed by the assignor or the assignor's duly authorised agent. The assignment needs also to be specific as to the

rights assigned, the duration thereof and the territorial extent of the assignment. Though it is not relevant for the present purpose, when the assignment is not specific in one or more of the several aspects, certain statutory presumptions arise. However, in the present case, both Mohideen and Sony claim complete assignment, at least in the Indian territory, in respect of sound recordings containing the musical works of which copyright has been assigned to either of them. On the other hand, Ayubkhan relies on the partial assignment for producing sound recordings containing the musical work only in overseas territories.

29. Since all three claimants to copyright - Mohideen, Sony and Ayubkhan - trace their rights to Chakravarthy, notwithstanding Sony's inconsequential denial of Chakravarthy's first ownership of copyright in some of the films, what has to be seen is whether Chakravarthy possessed the rights to be legally entitled to part therewith. Since it is the common case of all three claimants of copyright that it was Chakravarthy who was the producer of the relevant cinematograph films, Chakravarthy has to be regarded as the first owner of the copyright therein on a conjoint reading of Sections 13 and 17 of the Act together with the definitions of "producer" in Section 2 (uu) thereof and "work" in Section 2(y) of the Act. At any rate, Mohideen has not been able to demonstrate that the copyright assigned in favour of Sony by the immediate predecessor-in-ownership was not in respect of the musical works relating to 13 of the 17 films over which Sony claims exclusivity.

30. The interest of Mohideen and Sony, the principal parties to the earlier suit, would be best served if the order of injunction is vacated and Sony permitted to continue to exploit the rights in the musical works pertaining to 13 of the 17 films, but upon maintaining accounts. The converse would not be appropriate in the light of very little material produced by Mohideen to indicate how he at present exploits the copyright in such musical works.

31. Accordingly, the judgment and order impugned, in so far as it pertains to C.S.No.207 of 2019, is set aside and substituted. The order of injunction passed in favour of plaintiff Mohideen is vacated. In respect of the films, namely Mugavari, Priyam, Vanjinathan and Vattakudi Iranian, Sony does not claim any rights. In view of such submission on behalf of Sony as recorded in the order impugned, no injunction is necessary and it will be open to the plaintiff to exploit the copyright in the music relating to the said four films to the exclusion of Sony. However, Sony will be entitled to exploit the copyright in the musical works pertaining to the remaining

13 of the 17 films upon maintaining due and proper accounts therefor. Accounts for blocks of two months should be made available to advocate for Mohideen within 45 days of the close of the second of the two months. In other words, accounts maintained for the months of January and February of a year should be forwarded to the plaintiff in the earlier suit by April 15 of the same year and so on. In default of such accounts being furnished in terms of this order for two consecutive periods, the order of injunction will revive. It is also made clear that the accounts should be meaningful and should reveal the extent of the exploitation of the copyright in the relevant musical work for the plaintiff in the earlier suit to be entitled to meaningful compensation if, upon the conclusion of the trial of this suit, the plaintiff in the earlier suit is found to be the owner of the copyright.

32. As far as the order pertaining to C.S.No.596 of 2019 is concerned, the order impugned refusing to grant injunction is set aside. Both Mohideen and Sony will remain restrained from exploiting the copyright in the music pertaining to the film "Citizen" in any overseas territory. That will imply the broadcast of the music in any overseas territory, but will not cover the broadcast of the music from Indian territory. However, both Mohideen and Sony should endeavour to ensure that the broadcast from Indian territory is not available in any overseas territory.

33. It is made clear that the observations herein are purely for the present interlocutory purpose and will have no impact at the trial of the suit. The parties are left free to complete the formalities to make the suits ready for hearing and approach the appropriate Bench for the early trial thereof.

O.S.A.Nos.167 and 210 of 2020 are disposed of as above. There will be no order as to costs. Consequently, C.M.P.Nos.8373 and 10542 of 2020 are closed.

s/d-
Deputy Registrar (CS)

True Copy

Sub-Assistant Registrar

sasi

To:

The Sub Assistant Registrar
Original Side
High Court, Madras.

+2 Ccs to Mr.K. Harishankar, Advocate sr 23444.
+2 Ccs to Mr.K. Harishankar, Advocate sr 23443.
+2 Ccs to Mr. Abishek Jenasenan, Advocate sr 23037.

O.S.A.Nos.167 and 210 of 2020

LN(CO)
SP(30/06/2021)