



WEB COPY



C.S.No.331 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.02.2022

PRONOUNCING ORDERS ON : 07.02.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Civil Suit No.331 of 2014
(Comm.Suits)

M/s.Sreedevi Video Corporation
Rep. by its Partner Mr.Ganshyam Hemdev
Old No.14, New No.2
Vidyodaya 2nd Cross Street
T.Nagar, Chennai-600 014.

.. Plaintiff

**[Amended as per order dated 25.10.2019
in A.No.2920/2018 and time extended as per
order dt.28.11.2019]**

.VS.

1.M/s.SaReGaMa India Ltd.,
Door No.2,3,4 & %
3rd Floor, Kasi Arcade
No.116, Thyagaraja Road
T.Nagar, Chennai 600 017.

2.M/s.Poornodaya Movie Creations
No.35, Kamdar Nagar, Nungambakkam
Chennai 600 034.

2.M/s.Poornodaya Art Creations
No.35, Kamdar Nagar, Nungambakkam
Chennai 600 034.

..Defendants



C.S.No.331 of 2014

Prayer: Civil Suit has been filed under Sections 55 and 62 of the Indian Copyright Act, 1957 r/w Order IV Rule 1 of Original Side Rules and Order VII Rule 1 CPC., prays for a judgement and decree against the defendants as follows:

a) For a declaration that the Plaintiff is the absolute owner of the limited copyrights viz., the entire audio copyrights in the sound records of the Plaint Schedule mentioned films, in terms of the two agreements dated 17.07.2008 for a perpetual period;

b) For a permanent injunction restraining the 1st defendant, their men, agents, servants or assigns from in any manner infringing the plaintiff's limited copyrights viz., the entire audio copyrights in the sound records of the Plaint Schedule mentioned films, in terms of two agreements dated 17.07.2008 for a perpetual period

c) For costs of the suit

d) For such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.K.Harishankar

For Defendants : Mr.P.R.Raman, Senior Counsel
for Ms.Aparajitha
for M/s.Udayarkar Rangarajan
for D 1

Mr.Avinash
for Mr.V.Raghavachari
for D2 & D 3



C.S.No.331 of 2014

J U D G M E N T

WEB COPY

The present suit has been filed for the relief of declaration that the plaintiff is the absolute owner in the entire audio copyrights in the sound recordings of the films mentioned in the Plaint Schedule by means of two agreements dated 17.7.2008 and for a permanent injunction restraining the 1st defendant from in any manner infringing the copyright of the plaintiff.

2. The case of the plaintiff is that they are in the business of exploiting, manufacturing and marketing pre-recorded cassettes- audio and video content digitally and through all mediums. During the course of their business, they entered into an agreement dated 17.7.2008 with the 2nd defendant and by virtue of the same, the plaintiff claims that the entire copyright in the works relating to the entire sound track in the five films owned by the 2nd defendant was assigned in favour of the plaintiff on a perpetual basis. Similarly the plaintiff also entered into an agreement on 17.7.2008 with the 3rd defendant and by virtue of the same, the plaintiff claims that the entire copyright in the works relating to the entire sound track in the two films owned by the 3rd defendant was assigned in favour of the plaintiff on a perpetual basis.

3. The further case of the plaintiff is that they became the sole and absolute



C.S.No.331 of 2014

owner of all the audio copyrights in the seven films (hereinafter referred to as **Schedule Films**) and they were exploiting their rights in the audio works immediately after the right was assigned through the above agreements.

4.The plaintiff received a letter dated 6.8.2010 from the 1stdefendant wherein the 1st defendant claimed that they were the sole and absolute owners of the copyright and other related rights in the sound recording of the films Sithara, Seethakoka, Chilaka, Sankarabharanam and Sagarasangamam. Immediately on receipt of this letter, the plaintiff contacted their assignors namely the 2nd and 3rd defendants and sought for a clarification. It is stated that the 2nd and 3rd defendants informed the plaintiff that the audio rights were assigned by them earlier for a period of 25 years to one M/s. Sea Records and the period was over. That apart the 2nd and 3rd defendants also furnished to the plaintiff a letter dated 13.4.2005 which was written by the 2nd and 3rd defendants to the 1st defendant wherein the 1st defendant was informed that the rights assigned in favour of M/s. Sea Records has already expired and hence the 1st defendant does not have any right to further exploit the copyright. The plaintiff claims that they were satisfied with the clarification given by the 2nd and 3rd defendants and hence without giving any reply to the letter dated



C.S.No.331 of 2014

6.8.2010, they continued to exploit the audio rights in the Schedule Films.

WEB COPY

5. The further case of the plaintiff is that they came to know during April 2014 that the 1st defendant is continuing to sell the audio CDs of the Schedule Films through internet and online stores. Hence an order was placed and the plaintiff was able to buy the infringing CDs. A legal notice was also issued by the plaintiff to the 1st defendant calling upon the 1st defendant to cease and desist from infringing the copyright of the plaintiff and selling the audio contents. The 1st defendant even thereafter continued to infringe the copyright of the plaintiff. This was the trigger for filing the present suit and seeking for reliefs against the 1st defendant.

6. The case of the 1st defendant is that the 3rd defendant entered into an agreement on 22.4.1978 and 17.9.1979 with M/s. Sea Records and thereby the 3rd defendant transferred and assigned all the recording rights and all the mechanical reproduction rights including the rights in the performance of the 3rd defendant's artists, musicians, etc., in all the works to be recorded or re-recorded under the provisions of the agreement in favour of M/s. Sea Records. Subsequently, on 9.8.2000, M/s. Sea Records entered into an assignment agreement with M/s.



C.S.No.331 of 2014

Gramophone Company of India Ltd., erstwhile Company of the 1st defendant, and by virtue of this agreement, all the rights, title and interest was assigned and transferred in the sound recording together with the literary and musical works included therein, to the 1st defendant for the various films that are mentioned in the Annexure to the assignment agreement.

7.Immediately after the execution of the assignment agreement, the 1st defendant started exploiting the sound recording. The 1st defendant received a letter dated 13.4.2005 from the 2nd and 3rd defendants stating that the period of agreement with M/s. Sea Records has expired and called upon the 1st defendant to pay the royalty to the 2nd and 3rd defendants. The 1st defendant gave a reply dated 17.8.2005 to the 2nd and 3rd defendants whereby the 1st defendant asserted that M/s. Sea Records has the absolute rights and the same was assigned in favour of the 1st defendant and hence there was no requirement to pay any royalty to the 2nd and 3rd defendants.

8.The further case of the 1st defendant is that the 2nd and 3rd defendants had subsequently executed two assignment agreements dated 17.7.2008 in favour of the



C.S.No.331 of 2014

plaintiff and on coming to know that the plaintiff is exploiting the songs in the cinematograph films, a cease and desist notice dated 6.8.2010 was issued to the plaintiff which did not evoke any response from the plaintiff. After nearly four years, a pre- suit notice was issued by the plaintiff and even without allowing the 1st defendant to respond, the plaintiff has rushed to this court and has filed the present suit. According to the 1st defendant, the suit itself is barred by limitation and that apart even on merits, the reliefs sought for by the plaintiff is unsustainable.

9.The 2nd and 3rd defendants have also filed written statement. They have taken a stand to the effect that the right was confined for a period of 25 years in favour of M/s. Sea Records. The further case of these defendants is that M/s. Sea Records did not have a right to execute an assignment in favour of the 1st defendant and hence these defendants have asserted their rights to execute a fresh assignment agreement in favour of the plaintiff and have sought for granting relief in favour of the plaintiff. In short, the 2nd and 3rd defendants are supporting the case of the plaintiff.

10. Based on the above pleadings, the following issues came to be framed by this Court:



C.S.No.331 of 2014

WEB COPY

- a) Whether the suit is barred by limitation?
- b) Whether the second and third defendants had assigned copyrights in the suit pictures in favour of the first defendant's predecessor M/s. Sea Records, for a period of 60 years as alleged by the first defendant?
- c) Whether the first defendant is entitled to exploit the rights after a period of 25 years of assignment in favour of its predecessor M/s. Sea Records?
- d) Whether the plaintiff is entitled to a declaration of Copyrights in its favour ?
- e) Whether the agreement entered into between M/s. Sea Records and defendants 2 and 3 were limited to a period of 25 years ?
- f) Whether the plaintiff could have filed this suit after a lapse of 14 years from the date on which the first legal notice was issued ?
- g) Whether the second and third defendants could have assigned the rights to the plaintiff ?

11. PW-1 was examined on the side of the plaintiff and Exhibits P1 to P6 were marked. DW-1 was examined on the side of the 1st defendant and Exhibits D1 to D8 were marked.

12. Heard Mr.K.Harishankar, learned counsel for the plaintiff and Mr.P.R.Raman, learned Senior Counsel appearing on behalf of the defendants.



C.S.No.331 of 2014

WEB COPY

13. Since the 1st defendant has raised a preliminary objection to the effect that the suit is barred by limitation and the first issue framed by this Court also pertains to the same, this Court will deal with this issue. Only after answering this issue, the requirement to go into the merits of the case will arise.

14. Before appreciating the contentions raised by the counsel appearing on behalf of the plaintiff and the 1st defendant on the issue of limitation, it is important to take into consideration certain factual aspects and the evidence on record. The plaintiff has entered into two assignment agreements with the 2nd and 3rd defendants on 17.7.2008 and these agreements have been marked as Exhibits P1 and P2. By virtue of these agreements, the 2nd and 3rd defendants have assigned exclusively and irrevocably the entire copyright in the works relating to the entire sound track in the Schedule Films. Thereby, the plaintiff is claiming to be the sole and absolute owner of all the audio copyrights in the Schedule Films and according to the plaintiff, they have been exploiting their rights in the audio works immediately after the agreement was executed in their favour by D2 and D3.

15. Nearly after two years, the plaintiff receives a letter dated 6.8.2010 from the 1st defendant which has been marked as Exhibit P3. In and through this letter,



C.S.No.331 of 2014

the 1st defendant informed the plaintiff that they are the sole and absolute owner of the copyright and other related rights in and to the sound recordings and the underlying musical and literary works of the songs pertaining to the Schedule Films.

The 1st defendant has categorically called upon the plaintiff to cease and desist from exploiting the sound recordings. For proper appreciation, the contents of the letter is extracted hereunder:

“It has recently come to our knowledge that the songs as mentioned in the enclosed list (‘said songs’) are being exploited in an unauthorized manner by you and/or third parties authorized by you on various mobile/ digital platforms inter alia by way of ring-tones, caller ring back tones, digital downloads and the revenue generated from the exploitation of the said songs is being collected by you and such third parties authorized by you.

Please be informed that Saregama India Limited is the sole and absolute owner of the copyright and other related rights in and to the sound recordings and the underlying musical and literary works of said songs. Furthermore, Saregama India Limited and its sub-publishers/licensees have the exclusive right to exploit the said songs in all mobile/ digital platforms including but not limited to ring-tones, caller back ring-tones, digital downloads etc. in any mode, manner or format now known or invented in the future.

Please note that remix/cover versions of the said songs can only be exploited



C.S.No.331 of 2014

on mobile/ digital platforms solely and exclusively by Saregama India Limited and/or by any third party authorized by us.

Accordingly, without prejudice to our rights in the matter, we hereby direct you to comply with the following requisitions and confirm to us in writing within 7 days of receipt of this letter by you:

- i. Forthwith cease and desist from exploiting the said songs in all mobile/digital formats and/or in any manner whatsoever;
- ii. Forthwith furnish to us, a written understanding that you and/or any third party authorized by you, shall not henceforth exploit the said songs in all mobile/digital formats and/or in any manner whatsoever;
- iii. Provide us with a detailed and updated statement of exploitation of the said songs on various mobile/digital platforms beginning with the respective names and details of such platforms, dates of deployment on such platforms and the revenue earned and/or outstanding till date from such exploitation; and
- iv. Credit to the account of Saregama India Limited any and all revenues generated till date and/or outstanding from the exploitation of the said songs on/ through various mobile/ digital platforms and/or in any manner whatsoever.”



C.S.No.331 of 2014

WEB COPY

16. It is clear from the tenor of the above letter that the 1st defendant was claiming an absolute right and ownership of the copyright relating to the sound recordings of the songs and literary works in the Schedule Films. Admittedly the plaintiff on receipt of this letter did not respond to the 1st defendant. The case of the plaintiff is that they immediately contacted the 2nd and 3rd defendants and the 2nd and 3rd defendants had informed the plaintiff that they assigned the audio rights in favour of one M/s. Sea Records for a period of 25 years and that period had expired. The plaintiff was also informed that the 2nd and 3rd defendants issued a letter to the 1st defendant dated 13.4.2005 which has been marked as Exhibit P6 and through this letter, they informed the 1st defendant that the period of assignment given to M/s. Sea Records had come to an end and the 1st defendant was called upon to pay the royalty to the 2nd and 3rd defendants for exploiting the audio rights in the Schedule Films. On receipt of this letter, the 1st defendant through letter dated 17.8.2005, marked as Exhibit D8, informed the 2nd and 3rd defendants that they are the owners of the copyright and that they are not liable to pay any royalty. In this letter, there is a further reference to the legal notice dated 18.10.2000 issued to M/s. Sea Records and the reply dated 4.11.2000 received from M/s. Sea Records. In view of the same,



C.S.No.331 of 2014

it becomes necessary to take note of these two documents.

WEB COPY

17.The 2nd and 3rd defendants issued two separate legal notices dated 18.10.2000 to M/s. Sea Records and M/s. Gramophone Company India Ltd (erstwhile company of the 1st defendant) calling upon them to render true and proper accounts for the sale and exploitation of the sound recordings in the Schedule Films and to pay the royalty to the 2nd and 3rd defendants. On receipt of this legal notice, M/s. Sea Records issued a reply notice dated 4.11.2000 and this reply notice has been marked as Ex D7. In this reply notice, M/s. Sea Records has taken a very categorical stand that under the agreements entered into with M/s. Sea Records, which has been marked as Exhibits D2 and D3, the copyright has been assigned to M/s. Sea Records absolutely which is for a period of 60 years and hence M/s. Sea Records categorically denied the stand taken by the 2nd and 3rd defendants that the copyright was assigned only for a period of 25 years. For proper appreciation, the stand taken by M/s. Sea Records in the reply notice is extracted hereunder:

“My client states that no doubt an agreement was entered into between my clients and your clients in respect of providing musicians and artistes in respect of the pictures “Seethakoka” “Chilaka”, “SaagaraSangamam” -Telugu and Malayalam, “Salangai Oli” (Tamil) and



C.S.No.331 of 2014

“Sitara” and “ThayarammaBangarayya” and “Sankarabaranam”.

WEB COPY

My clients also agreed to pay royalty and also furnish half-yearly statement of accounts. In fact, my clients paid substantial sum of advance royalty to your clients.

My clients further state that they suffered an Excise raid a few years back and the entire books of accounts and files were taken away. Your clients are well aware of the same and my clients informed your clients that they were not in a position to send statement of accounts because of the aforesaid reason. The very fact that your clients kept quiet for so many years itself would go to show that your clients are fully aware of the helpless situation of my clients. My clients have no intention to deprive your clients of the royalty amount. However, my clients can only after verifying their account books send the statements and will be settling your clients' account, if at all anything is found payable to your clients.

My clients deny the allegation that they are liable for damages to your clients for having transferred or assigned the rights. My clients have not committed any breach of the agreement entered into with your clients. In fact they are well within their rights under the Agreement to choose their customers. As and when the other audio companies including The Gramophone Co. of India, Lahari etc, settle their account, proportionate

royalty will be paid to your clients in due course. Further, my clients have not committed any breach or attempted to cheat your clients in any clients in any manner. My clients have good reputation in the market. Your clients are aware of the excellent reputation of my clients in the market.



C.S.No.331 of 2014

My clients deny that they have sold the rights for undisclosed amounts.

WEB COPY

My clients deny that they have no right in respect of compact discs.

The agreement covers any kind or type of audio media. It has been specifically agreed that my clients have absolute right in respect of double sided disc records, a magnetic tape or any other sound bearing contrivance or appliances reproducing a performance by the clients, artists, musicians. Hence the allegations to the contra are not well founded.

My clients also state that they are the absolute owners of the copy rights which is for a period of 60 years and your clients, in pursuance of the Agreement with my clients are bound not to, without prior approval of my clients, commencing from the first release of the respective recording, allow any of your clients' musical and/or other works released by my clients to be recorded or re-recorded by any of your clients' artists and musicians etc. or from any film sound tracks or recorded tapes or other means for any other persons, firm or corporation and only in this regard the limitation of your clients will expire after a period of 25 years and the copy rights, however, shall vest only with my clients even thereafter.

My clients state that regarding the sound track "Sankarabharanam" your clients directed my clients and irrevocably authorized my clients to settle royalty payment to M/s. Sathish Film Exports directly."

18.It is clear from the above reply notice that M/s. Sea Records had chosen to challenge the copyright of the 2nd and 3rd defendants and they have claimed to be



C.S.No.331 of 2014

the absolute owners of the copyrights for perpetuity.

WEB COPY

19. After the exchange of the above notices, the 2nd and 3rd defendants have proceeded to enter into agreements with the plaintiff marked as Exhibits P1 and P2.

20. The plaintiff on receipt of the letter dated 6.8.2010 from the 1st defendant, became aware of all the above developments and as a prudent businessman should have realised that there is a serious dispute on the ownership over the audio copyrights in the Schedule Films. Without any doubt, the knowledge of the plaintiff with regard to the dispute on the ownership of the copyright is apparent immediately on receipt of the letter dated 6.8.2010 issued by the 1st defendant. Even when the plaintiff was enquiring to the 2nd and 3rd defendants about the claim made by the 1st defendant, the documents handed over by the 2nd and 3rd defendants to the plaintiff shows that even M/s. Sea Records as early as in the year 2000 had questioned the right and ownership of the 2nd and 3rd defendants in the audio copyrights in the Schedule Films. In short, the dispute with regard to the ownership over the copyright had started in the year 2000 itself and it can be safely taken that the plaintiff became aware of the same only in the year 2010 after receiving the letter dated 6.8.2010



C.S.No.331 of 2014

WEB COPY

from the 1st defendant. For some unknown reasons, the plaintiff neither chose to give a reply to the 1st defendant nor chose to approach the court to declare their audio copyrights in the Schedule Films.

21. On a careful perusal of the pleadings, it is seen that the sequence of events straight away jumps from the year 2010 to 2014 without explaining as to what really happened during this interregnum period of nearly 4 years. It is pleaded that in April 2014, the plaintiff came to know that audio CDs are sold in the market by the 1st defendant through internet and online stores pertaining to the songs in the Schedule Films and immediately thereafter, a legal notice dated 3.5.2014 is issued to the Calcutta Office of the 1st defendant, marked as Exhibit P4 and this notice was returned unserved. Once again a legal notice dated 9.5.2014 was issued to the local address of the 1st defendant, marked as Exhibit P5 and this notice was received by the 1st defendant and by the time any reply could be given by the 1st defendant, the suit came to be filed on 13.5.2014. These pleadings read with the legal notice goes on to show that a cause of action was created by the plaintiff to file the above suit.

22. It will also be relevant to take note of the answers given by PW-1 during the course of cross examination in this regard. The witness was repeatedly asked by



C.S.No.331 of 2014

the counsel during the cross examination as to whether he had gone through the earlier documents and the notices exchanged between the parties and the witness gives evasive replies for all these questions. Ultimately when the witness was cross-examined on the cause of action for filing the above suit, the following answers were given:

“Q155. In paragraph 7 of the plaint, while pleading the cause of action, you have not given specific dates of the alleged infringement. Is it correct?

A. Yes.

Witness adds:- I however had filed a bill of purchase from an online store which shows the date. That date could be the date of infringement.

Q156. Along with the plaint, you have filed List of documents which contains 7 documents. Can you show whether you have filed any such bill of purchase along with the plaint?

A. No.

Q157. Attention of the witness is drawn to Ex.P6 dated 13.04.2005.

Did you go through the contents of Ex.P6 before filing the plaint?

A.No I do not remember.

Q158. Did you get anything in writing from Defendants 2 and 3 before filing this suit?

A. I do not recall getting anything in writing other than my assignment.



C.S.No.331 of 2014

WEB COPY

Q159. Attention of the witness is drawn to Ex.P6 dated 13.04.2005. This is from the 3rd Defendant addressed to the 1st Defendant. Is it correct?

A. Yes. It seems so.

Q160. The name of the 1st Defendant was previously Gramophone Company of India Ltd. What do you say?

A. Yes.

Q161. In Ex.P6 dated 13.04.2005, the 3rd Defendant has referred to the 1st Defendant's Legal Department. Is it correct?

A. Yes.

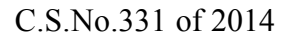
Q162. In Ex.P6, the 3rd Defendant has requested the 1st Defendant to clarify with the premier film trade body the South Indian Film Chamber of Commerce. Is it so?

A. Yes.

Q163. Was any such clarification obtained from South Indian Film Chamber of Commerce before you entered into Ex.P1 and Ex.P2?

A. I have no knowledge of any such clarification either being issued or not by South Indian Film Chamber of Commerce.

Q164. Did you ask Defendants 2 and 3 as to what was the reaction or reply



A. No. I do not recall asking any such question.

A. No I do not recall any such exchange of conversation.

A. No I did not enquire about any reply.

A. I totally deny

23. The Learned Counsel for the plaintiff submitted that a bare perusal of the agreement marked as Exhibits D2 and D3 clearly shows that the copyright was assigned in favour of M/s. Sea Records only for a period of 25 years and thereafter, M/s. Sea Records without any audio copyrights had assigned a non-existent right in



C.S.No.331 of 2014

WEB COPY

favour of the 1st defendant. Therefore, the 1st defendant does not have any audio copyrights in the Schedule Films. The Learned Counsel further submitted that every time the 1st defendant infringed upon the audio copyrights of the plaintiff, a cause of action will arise and this is a case of continuing cause of action for every infringement. Hence the last cause of action in the year 2014 when the 1st defendant was selling audio CDs pertaining to the songs in the Schedule Films, created a new cause of action for filing the present suit. Therefore the learned Counsel submitted that the suit has been filed well within the period of limitation and the preliminary objection taken by the 1st defendant is unsustainable.

24. Per contra, the learned Senior Counsel appearing on behalf of the 1st defendant submitted that this is a case where the plaintiff has sought for the relief of declaration of the copyright and permanent injunction and hence the limitation has to be determined under Article 58 of the Limitation Act which specifically provides that the period of limitation will be three years from the time when the right to sue first accrues. The learned Senior Counsel submitted that the knowledge of the plaintiff on the rival claim made by the 1st defendant started in the year 2010. The



C.S.No.331 of 2014

plaintiff has not pleaded anything to the effect that the 1st defendant did not exploit copyright between the years 2010 to 2014. Therefore unless the plaintiff has pleaded and proved that between 2010 to 2014 there was no cause of action viz., there was no infringement on the part of the 1st defendant, the suit will be hopelessly barred by limitation. The learned Senior Counsel further submitted that the concept of continuing cause of action will not apply in a suit where the plaintiff has sought for a declaratory relief. Insofar as the relief for permanent injunction is concerned, such a relief can be granted to the plaintiff only if the plaintiff is able to succeed in the declaratory relief. In other words, the relief of permanent injunction is consequential and it cannot stand independently away from the relief of declaration.

25. It is clear from the materials available before this Court that there is a serious dispute with regard to the ownership over the audio copyrights. This dispute has been going on from the year 2000 onwards. It is an admitted case that the 2nd and 3rd defendants had assigned the copyright in favour of M/s. Sea Records. According to the 2nd and 3rd defendants, the assignment was made only for a period of 25 years in favour of M/s. Sea records. Whereas M/s. Sea Records as early as in the year 2000 itself takes a clear stand that the right that was conveyed to them is in perpetuity. They categorically deny the rights of the 2nd and 3rd defendants. Once



C.S.No.331 of 2014

WEB COPY

again the 2nd and 3rd defendants rake up this issue with the 1st defendant in the year 2005 by letter dated 13.4.2005 and the 1st defendant through their letter dated 17.8.2005 denies the right of 2nd and 3rd defendants and also makes reference to the earlier communication between the 2nd and 3rd defendants and M/s. Sea Records in the year 2000. All these information was gathered by the plaintiff from the 2nd and 3rd defendants when they received the letter dated 6.8.2010 from the 1st defendant. In this letter, the 1st defendant in very categoric terms states that they are the absolute owners of the audio copyrights. This means that the 1st defendant is challenging the very title and right of the plaintiff in the audio copyrights pertaining to the Schedule Films. Therefore the cause of action arose immediately on receipt of this letter dated 6.8.2010.

26. In the present case, the relief of permanent injunction, cannot stand independently even though it is claimed separately as a relief. The relief of permanent injunction is dependent on the relief of declaration. In other words, it is in the nature of a consequential relief. If for instance the present suit was filed only for the relief of permanent injunction without there being any dispute over the right and title on the audio copyrights, there will be no difficulty in tracing the limitation under



C.S.No.331 of 2014

Article 113 of the Limitation Act and this Article specifically provides that it will be three years from the time when the right to sue accrues. Consciously the term “first” is not used in this Article. This means that every time when there is exploitation of copyright, the right will accrue and the suit can be filed within three years. Unfortunately, the present case does not fall under Article 113 of the Limitation Act since the relief of permanent injunction is dependent upon the relief of declaration.

27. In view of the above, the limitation in the present case has to be construed only under Article 58 of the Limitation Act which prescribes the period of limitation as three years from the time when the right to sue **FIRST** accrues. The scope of this Article, has been discussed by the Hon’ble Supreme Court in **Khatri Hotels (P) Ltd. v. Union of India** reported in **2011 9 SCC 126**. The relevant portions in the judgment are extracted hereunder:

“21. Shri Harin P. Raval, learned Additional Solicitor General and Shri Amarendra Sharan, learned Senior Counsel appearing for DDA argued that the concurrent finding recorded by the trial court and the High Court that land on which the appellants were running a restaurant does not form part of Khasra Nos. 2728/1674/2 and 2728/1674/3 is a pure finding of fact based on correct analysis of the pleadings of the parties and evidence



C.S.No.331 of 2014

WEB COPY

produced by them and the same does not call for interference under Article 136 of the Constitution. Shri Sharan submitted that the suit filed by the appellants for declaration of title and injunction was rightly dismissed by the trial court because they had not produced any evidence to prove that the suit land forms part of land purchased by Appellant 2 and his brothers.

22. Shri Sharan then argued that the suit filed in the year 2000 was barred by limitation because the cause of action had accrued to the appellants on 10-8-1990 when the officials of the Corporation and DDA are said to have visited the suit premises and threatened to demolish the superstructure and, in any case, the cause of action accrued to them in December 1990 when the written statement was filed on behalf of DDA with a categorical assertion that with the urbanisation of the rural areas of Village Kishangarh, the suit land automatically vested in the Central Government, which transferred it to DDA vide Notification dated 20-8-1974. The learned Senior Counsel lastly submitted that the appellants are not entitled to any relief because they had not approached the Court with clean hands and suppressed material facts and documents.

23. We shall first consider the question whether the suit filed by the appellants on 14-2-2000 was within limitation and the contrary concurrent finding recorded by the trial court and the High Court is legally unsustainable.

24. The Limitation Act, 1963 (for short “the 1963 Act”)



C.S.No.331 of 2014

WEB COPY

prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.

25. Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

“THE SCHEDULE

PERIOD OF LIMITATION

[See Sections 2(j) and 3]

First Division—Suits

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>*</i>	<i>*</i>	<i>*</i>

PART III—Suits Relating To Declarations

** * **

58 To obtain any other . declaration. Three years When the right to sue first accrues.”

26. Article 120 of the Schedule to the Limitation Act, 1908 (for short “the 1908



C.S.No.331 of 2014

Act”) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

<i>“Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>*</i>	<i>*</i>	<i>*</i>
<i>120. Suit for which no period of limitation is provided elsewhere in this Schedule.</i>	<i>Six years</i>	<i>When the right to sue accrues.”</i>

27. The differences which are discernible from the language of the above reproduced two articles are:

- (i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,*
- (ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.”*

28. The next judgment that can be taken note of is the judgment in **Kandla Port v. Hargovind Jasraj**, reported in 2013 3 SCC 182. The relevant portions in the judgment are extracted hereunder:

“21. A suit for declaration not covered by Article 58 of the Schedule to the Limitation Act, 1963 must be filed within 3 years



C.S.No.331 of 2014

WEB COPY

from the date when the right to sue first arises. Article 58 applicable to such suits reads as under:

	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.”

22. The expression “right to sue” has not been defined. But the same has on numerous occasions fallen for interpretation before the courts. In *State of Punjab v. Gurdev Singh* [(1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287 : (1992) 1 LLJ 283] , the expression was explained as under: (SCC p. 5, para 6) “6. ... The words ‘right to sue’ ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted....”

23. Similarly in *Daya Singh v. Gurdev Singh* [(2010) 2 SCC 194 : (2010) 1 SCC (Civ) 379] the position was restated as follows: (SCC pp. 198-99, paras 13-16)

“13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has



WEB COPY

prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.

14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in Bolo v. Koklan [(1929-30) 57 IA 325 : AIR 1930 PC 270] . In this decision Their Lordships of the Privy Council observed as follows: (IA p. 331)

‘... There can be no “right to sue” until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.’

15. A similar view was reiterated in C. Mohammad Yunus v. Syed Unnissa [AIR 1961 SC 808] in which this Court observed: (AIR p. 810, para 7)

‘7. ... The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right



C.S.No.331 of 2014

WEB COPY

asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.'

In C. Mohammad Yunus [AIR 1961 SC 808] , this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

16. ... Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants....”

24. References may be made to the decisions of this Court in Khatri Hotels (P) Ltd. v. Union of India [(2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484] wherein this Court observed: (SCC p. 139, para 30)

“30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue



C.S.No.331 of 2014

WEB COPY

first accrued.”

(emphasis supplied)

25. The right to sue in the present case first accrued to the lessee on 13-12-1978 when in terms of order dated 8-8-1977 the lease in favour of the lessee was terminated. A suit for declaration that the termination of the lease was invalid hence ineffective for any reason including the reason that the person on whose orders the same was terminated had no authority to do so, could have been instituted by the lessee on 14-12-1978. For any such suit it was not necessary that the lessee was dispossessed from the leased property as dispossession was different from termination of the lease. But even assuming that the right to sue did not fully accrue till the date the lessee was dispossessed of the plot in question, such a dispossession having taken place on 14-12-1978, the lessee ought to have filed the suit within three years of 15-12-1978 so as to be within the time stipulated under Article 58 extracted above. The suit in the instant case was, however, instituted in the year 1996 i.e. after nearly eighteen years later and was, therefore, clearly barred by limitation. The courts below fell in error in holding that the suit was within time and decreeing the same in whole or in part.”

29. The latest judgment on this issue is ***Shakti BoghFood Industries Vs.***



C.S.No.331 of 2014

Central Bank of India and Ors. reported in 2020 SCC OnLine SC 482. The relevant

portions in the judgment are extracted hereunder:

“15. The expression used in Article 113 of the 1963 Act is “when the right to sue accrues”, which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three Courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

16. Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue “first” accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded “first” become known to him) and Article 104 (when the plaintiff is “first” refused the enjoyment of the right). The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the expression in Article 113 as - when the right to sue (first) accrues. This would be re-writing of that provision and doing violence to the legislative intent. We must assume that



C.S.No.331 of 2014

WEB COPY

the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression “when the right to sue accrues” in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts.

17. We may usefully refer to the dictum of a three-Judge Bench of this Court in Union of India v. West Coast Paper Mills Ltd.⁵, which has had an occasion to examine the expression used in Article 58 in contradistinction to Article 113 of the 1963 Act. We may advert to paragraphs 19 to 21 of the said decision, which read thus:—

“19. Articles 58 and 113 of the Limitation Act read thus:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>To obtain any other declaration.</i>	<i>Three years</i>	<i>When the right to sue first accrues.</i>
<i>*</i>	<i>*</i>	<i>*</i>
<i>Any suit for which no period of limitation is provided elsewhere in this Schedule.</i>	<i>Three years</i>	<i>When the right to sue accrues.</i>

20. It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regards unreasonableness in the levy of freight was granted by the Tribunal.

21. A distinction furthermore, which is required to be noticed



C.S.No.331 of 2014

WEB COPY

*is that whereas in terms of Article 58 the period of three years is to be counted from the date when “the right to sue first accrues”, in terms of Article 113 thereof, the period of limitation would be counted from the date “when the right to sue accrues”. **The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose.**”*

(emphasis supplied)

18. Similarly, in Khatri Hotels Private Limited v. Union of India⁶, this Court considered the expression used in Article 58 in contradistinction to Article 120 of the old Limitation Act (the Indian Limitation Act, 1908). In paragraph 24, the Court noted thus:—

“24. The Limitation Act, 1963 (for short “the 1963 Act”) prescribes time limit for all conceivable suits, appeals, etc. Section



C.S.No.331 of 2014

WEB COPY

2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. ***If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.***”

(emphasis supplied)

19. The distinction between the two Articles (Article 58 and Article 120) has been expounded in paragraphs 27 to 30 of the reported decision, which read thus:—

“27. The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,



C.S.No.331 of 2014

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in Bolo v. Koklan [(1929-30) 57 IA 325 : AIR 1930 PC 270] and it was held : (IA p. 331)

“There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.” The same view was reiterated in Annamalai Chettiar v. Muthukaruppan Chettiar [ILR (1930) 8 Rang 645] and Gobinda Narayan Singh v. Sham Lal Singh [(1930-31) 58 IA 125].

29. In Rukhmabai v. Lala Laxminarayan (AIR 1960 SC 335), the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words : (Rukhmabai case [AIR 1960 SC 335, AIR p. 349, para 33])

“33. ... The right to sue under Article 120 of the [1908 Act]



C.S.No.331 of 2014

WEB COPY

accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit.

Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.”

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

(emphasis supplied)



C.S.No.331 of 2014

WEB COPY

20. Notably, the expression used in Article 113 is similar to that in Article 120, namely, “when the right to sue accrues”.

Hence, the principle underlying this dictum must apply proprio vigore to Article 113.”

30. Section 3 of the Limitation Act lays down the general rule that if any suit is brought before the Court after the expiry of the prescribed time, the Court shall dismiss such a suit as time barred. It is trite law that the law of limitation bars the judicial remedy and does not extinguish the right. It is also made clear that such time barred claims shall be dismissed even if the other side has not set up the issue of limitation as a defence. A careful reading of the above judgments shows that the right to sue in a suit for declaration will arise the moment a right is asserted or there is a clear or unequivocal threat to the infringement of the right by the defendant. To put it simply, the threat exerted by the other side must effectively invade or jeopardise the right of the plaintiff. Once this happens, the right to sue begins. When it comes to a declaratory decree, Article 58 of the Limitation Act uses a peculiar term “first accrues”. This would mean that the period of limitation will begin to run from the date when the right to sue first accrues and successive violation of the right subsequently, will not give rise to a fresh cause of action. In other words, the concept



C.S.No.331 of 2014

of continuing cause of action will not apply to a relief of declaration because of the very language used under Article 58 of the Limitation Act.

31. Keeping the above law in mind, this Court will now apply it to the facts of the present case. The tenor of the letter dated 6.8.2010, extracted supra, clearly shows that the 1st defendant was asserting an absolute right in the audio copyrights of the Schedule Films. The plaintiff is claiming that they immediately reverted back to the 2nd and 3rd defendants and at which point of time, all the earlier communications came to the knowledge of the plaintiff. The assertion of the audio copyright was happening right from the year 2000 onwards and even the predecessor in title of the 1st defendant had asserted absolute right to the 2nd and 3rd defendants. Once again the 1st defendant asserted absolute right to the 2nd and 3rd defendants in the year 2005. The letter dated 6.8.2010 issued by the 1st defendant to the plaintiff is only a continuation/reiteration of the assertion of the absolute right over the audio copyrights in the Schedule Films. Once the plaintiff was made aware of all these facts, the plaintiff should have realised that there is a clear and unequivocal threat to their right, which effectively invades or will jeopardise the audio copyrights claimed by the plaintiff in the Schedule Films. Hence the right to



C.S.No.331 of 2014

sue first had arisen in the year 2010 itself. The so called cause of action pleaded during May 2014, at the best is only a successive violation of their rights and it will not help the case of the plaintiff to bring the suit within the period of limitation. In the present case, the suit for declaration and permanent injunction ought to have been filed within three years from 6.8.2010. Admittedly the suit has been filed only on 13.5.2014 which is well beyond the period of limitation.

32. In view of the above discussion, this Court holds that the present suit is barred by limitation and the suit is liable to be dismissed on this ground alone. The first issue is answered accordingly.

33. In view of the above finding, there is no requirement to go into the other contentions raised by the learned counsel appearing on the either side and go into the merits of the case to decide the other issues.

34. In the result, this suit is dismissed and considering the facts and circumstances of the case, the parties shall bear their own costs.



C.S.No.331 of 2014

07.02.2022

WEB COPY

Internet: Yes

Index : Yes

KP

..

List of Witness examined on the side of the Plaintiff:-

Mr.Ghanshyam Hemdev - PW-1

List of Witness examined on the side of the Defendant:-

Mr.Yash Asai - DW-1

List of the Exhibits marked on the side of the Plaintiff:-

<u>Exhibits</u>	<u>Date</u>	<u>Description of documents</u>
P-1	17.07.2008	Agreement between plaintiff and 2 nd defendant.
P-2	17.07.2008	Agreement between plaintiff and 3 rd defendant.
P-3	06.08.2010	Letter from 1 st defendant to plaintiff.
P-4	03.05.2014	Legal notice from plaintiff to 1 st defendant with returned cover.



C.S.No.331 of 2014

<u>Exhibits</u>	<u>Date</u>	<u>Description of documents</u>
P-5	09.05.2014	Legal notice from plaintiff to 1 st defendant with acknowledgement.
P-6	13.04.2005	Letter from 2 nd and 3 rd defendants to 1 st defendant.

List of the Exhibits marked on the side of the Defendants:- --

<u>Exhibits</u>	<u>Date</u>	<u>Description of documents</u>
D-1	27.05.2013	Board Resolution authorizing the deponent. (original).
D-2	22.4.1978	Agreement between Sea Records and Poornodaya Art Creations. (Photocopy).
D-3	17.09.1979	Agreement between Sea Records and Poornodaya Art Creations. (Photocopy)
D-4	9.08.2000	Assigned Agreement entered into between M/s. Sea Records and 1 st Defendant.
D-5	3.11.2000	Certificate of Incorporation of the 1 st defendant issued upon change of name. (certified copy)
D-6	-	Newspaper report (photocopy)
D-7	4.11.2000	Reply by M/s.Sea Records counsel to legal notice dated 18.11.2000. (True copy).
D-8	17.08.2005	Reply addressed by 1 st defendant in connection with letter dated 13 th April, 2005. (True copy).

N.ANAND VENKATESH, J.

KP



WEB COPY



C.S.No.331 of 2014

**Pre-Delivery Judgment in
Civil Suit No.331 of 2014
(Comm.Suits)**

07.02.2022

..