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A.No.4235 of 2024

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in

C.S.No.31 of 2010

K.KUMARESH BABU.J.,

This application had been filed under Order XIV Rule 8 of Original Side Rules R/W Order 1 Rule 10(2) of CPC for the following relief:-

- a) The above application should not be treated as an urgent?
- b) To implead the respondents 5 & 6 proposed defendants 5 and 6 namely “Phonographic Performance Limited” and “Phonographic Digital Limited” in the above suit?
- c) To pass suitable further or other orders in the circumstances of the case?

2. The learned counsel appearing on behalf of the applicant would submit that during the cross examination of PW-1, he had specifically indicated that they have licensed the commercial exploitation of the musical works to the respondents 5 & 6 herein and therefore, he had taken out the present application to implead them as party defendants to the Suit. He would vehemently contend that they are also necessary parties to establish the case of the defendants and also for implementation of the judgment and



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decree that may be passed in the Suit. He would also contend that if they are made parties, the extent of exploitation that had been made by the first respondent/plaintiff would also be ascertained and therefore he would pray this Court to allow the application and implead the 5th and 6th respondents as defendants in the Suit.

3. Countering his claim, Mr.P.R.Raman, learned Senior counsel appearing for Mr.C.Sethapathy, learned counsel appearing for the first respondent on the other hand would contend that the proposed defendants are neither necessary nor proper party to the Suit. He would contend that the Suit had been filed for a bare injunction restraining the defendants particularly the 3rd defendant of the musical works in which the plaintiff has the ownership of the copy rights. He would further contend that the proposed defendants are only a licensee under the plaintiff. He would contend that the applicant had not filed a counter claim. He would further submit that the first respondent even in the plaint has averred that the fifth respondent herein had been assigned by the license for exploiting the copy rights available to him and therefore, after 14 years, the applicant cannot plead only at the time of the cross examination, it had come to his knowledge that R5 & R6 having been



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assigned the rights for exploiting the copy rights in the musical works owned by the first respondent. Hence, he would seek dismissal of the application.

4. I have considered the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

5. The learned counsel appearing for the applicant would contend that if the respondents 5 & 6 are impleaded as party defendants to the Suit, it would be useful to know what is the extent of exploitation that had been made by the plaintiff. It may be true that such facts can be ascertained, but in the present facts and circumstances of the case, which had been filed only for a bare injunction by the first respondent against the applicant and the applicant having not filed any counter claim as rightly contended by the learned counsel appearing for the first respondent, there will be no useful purpose in even elucidating the exploitation that had been made by the first respondent/plaintiff. Further, the respondents 5 & 6 have been registered under provisions of Section 33 of the Copy Rights Act. Only a registered society can be granted licence by the copy right owner for exploitation of his copy right. Such society cannot claim to be the owner of the copy right. The



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ownership of the copy right continues to be with the owner and also a right to exploit the said copy right, inspite of granting licence to such society registered under the Copy Rights Act.

6. In such circumstances, I do not find any merits in the application. Also for the reasons discussed above, I do not find that the respondents 5 & 6 are just, proper and necessary parties for deciding the lis raised in the Suit.

7. In fine, the Application is dismissed. However, there shall be no order as to costs.

21.10.2024

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Index :Yes/No

Internet:Yes/No



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