

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3773 OF 2024
IN
COMMERCIAL IP SUIT (LODGING) NO. 16674 OF 2024

Speciality Restaurants Limited

...Applicant
/ Orig. Defendant

IN THE MATTER BETWEEN :

Novex Communications Pvt. Ltd.

...Plaintiff

Versus

Speciality Restaurants Limited

... Defendant

- Mr. Rajiv Narula a/w Mr. Tarang Jagtiani and Mr. Milind Mane i/b Jhangiani, Narula and Associates, for the Applicant.
- Mr. Rashmin Khandekar a/w Mr. Kunal Parekh and Ms. Nirali Atha i/b Dua Associates, for the Plaintiff.

CORAM : MANISH PITALE, J.

DATE : 10th FEBRUARY, 2025.

P. C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant (defendant) is seeking to recall / vacate order dated 28th August, 2024, passed by this Court or to issue necessary clarifications in respect thereof.
3. By the order dated 28th August, 2024, this Court granted ad-interim relief against the defendant in terms of prayer clause (a) of the interim application moved by the plaintiff, thereby restraining the defendant from publicly performing or in any manner communicating sound recordings of

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songs assigned to the plaintiff.

4. The learned counsel for the applicant (defendant) submitted that the aforesaid order dated 28th August, 2024, is causing undue hardship to the applicant/defendant. It is submitted that the exhibits filed alongwith the plaint i.e. alleged assignment agreements do not in any manner demonstrate how the plaintiff can claim any copyright in the sound recordings in respect of which an assertion is made that they were unauthorizedly communicated to the public by the applicant/defendant. It is submitted that in the absence of complete documents being placed on record, the defendant would find it difficult to resist the case of plaintiff and therefore, this Court may consider recalling / vacating order dated 28th August, 2024, whereby ad-interim relief was granted.

5. The learned counsel for the plaintiff, on the other hand, submitted that since the defendant was properly served and this was recorded in paragraph No.4 of the order dated 28th August, 2024, the only ground on which the defendant can seek recall/vacating of order dated 28th August, 2024, are the grounds found in the Second proviso to Order XXXIX Rule 4 of the CPC. These would be either change in circumstances or undue hardship caused to the defendant. It was submitted that paragraph Nos.9 and 10 of the plaint placed on record sufficient pleadings and documents to demonstrate the

basis on which the plaintiff is claiming copyright in the said sound recordings. Therefore, there is no substance in the contention raised on behalf of the defendant.

6. This Court has perused the contents of the order dated 28th August, 2024. In paragraph No.4 thereof, it is specifically recorded that an affidavit of service was placed on record, which demonstrated as to the manner in which the defendant was served with the papers pertaining to the present case, both physically and through e-mail. The affidavit of service is on record and it shows that the defendant was also notified about the listing of the application for urgent ad-interim reliefs on 28th August, 2024.

7. Therefore, the facts and circumstances of the present case show that only the second proviso of Order XXXIX Rule 4 of the CPC would apply. It is not even the case of the defendant that there is any chance in circumstances on the basis of which the present application is being pressed. The only ground raised is undue hardship. In support thereof, reference is made to few exhibits to claim that they are incomplete or truncated documents. This Court fails to understand how the aforesaid submissions can indicate undue hardship for the defendant. In any case, paragraph Nos.9 and 10 of the plaint, sufficiently demonstrate the manner in which relevant agreements/assignments/documents have been placed on record with the

plaint and there is also a reference to a link where the details of all such rights claimed by the applicant / plaintiff are available in the public domain. In such cases, this Court has on earlier occasions also held that the pleadings and documents, as placed on record in paragraph Nos.9 and 10 in the present case, are sufficient for the plaintiff to assert its proprietary rights in the sound recordings, the violation of which is alleged against the defendant.

8. In view of the above, this Court finds that applicant/defendant has failed to make out any ground for recalling or vacating the order dated 28th August, 2024. Hence, the application is dismissed.

9. This would not come in the way of the applicant/plaintiff to resist the application filed by the plaintiff under Order XXXIX Rule 1 and 2 of the CPC. Hence, the defendant is granted time of two weeks to file reply affidavit in Interim Application (Lodging) No.19351 of 2024.

10. Rejoinder affidavit, if any, be filed within one week thereafter.

11. List Interim Application (Lodging) No.19351 of 2024 for further consideration on **10th March, 2025, "High on Board."**

12. All other pending applications shall also be listed on the said date.

(MANISH PITALE, J.)