

Phonographic Performance Limited vs Ht Media Limited & Anr on 25 January, 2019

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 35/2019
PHONOGRAPHIC PERFORMANCE LIMITED Plaintiff
Through: Mr. N.B. Joshi, Mr. Neeraj K. Gupta
and Mr. Ranjeet Kumar Singh, Advs.
Versus
HT MEDIA LIMITED & ANR. Defendants
Through: Mr. Ashish Verma, Adv. for D-1.
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER

% 25.01.2019 IA No.1030/2019 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(COMM) 35/2019 & IA No.1029/2019 (u/O XXXIX R-1&2 CPC)

3. The plaintiff has instituted this suit for permanent injunction restraining the defendant No.1 from broadcasting on its FM Radio Stations license with respect where to has been issued to the defendant No.1 under the policy of Government of India the sound recording in which the plaintiff claims a copyright exclusive licence, and for ancillary reliefs.

4. The plaintiff in the suit itself has referred to CS(OS) No.2749/2011 and a copy of the interim order wherein is filed at pages 409 to 439 of the documents of the plaintiff. From a reading of the said order, it appears that the said order has application to broadcast from all FM Radio Stations of the defendant No.1. The need for this second suit has thus been enquired from the counsel for the plaintiff.

5. The counsel for the plaintiff states that the Government of India has opened the air waves for the purpose of FM Radio in three phases and Phase-II regime to which the earlier suit pertained provided for the compulsory licensing to FM Radio Stations and the rates thereof to be fixed by the Copyright Board; however for Phase-III, in which the licences for FM Radio Stations subject matter of present suit have been issued, there is no such thing and it is open to the parties to commercially fix the royalty rate. It is thus contended that the action of the defendant No.1, of treating the FM

Radio licences granted to it under Phase-III stage also, in terms of the interim order already in force, is not correct.

6. However, in the plaint, the said distinction is not clearly spelt out, though the counsel for the plaintiff has drawn attention to pages 50 & 51 of the plaint. Neither is any document filed on record in this context.

7. The counsel for the plaintiff has handed over in the Court a copy of the order of the Copyright Board reported in Music Broadcast Pvt. Ltd. Vs. Phonographic Performance Ltd. 2003 (26) PTC 70 (CB) and a sample copy of the licence granted in Phase-II and another order dated 25th August, 2010 of the Copyright Board stated to be also with respect to Phase-II.

8. The plaintiff, besides the defendant No.1, has also impleaded Sony Music Entertainment India Pvt. Ltd. as defendant No.2, claiming the defendant No.2 to be a necessary or proper party. However elsewhere in the plaint, it is pleaded that besides the defendant No.2, the plaintiff is an assignee/licensee of copyright of others also numbering more than 300. Section 61 of the Copyright Act, 1957 is cited for impleading the defendant No.2. It has as such been enquired from the counsel for the plaintiff, why others have not been impleaded as necessary and proper parties.

9. The counsel for the plaintiff states that while the defendant No.2 has granted an exclusive licence to the plaintiff, all others have assigned their copyright in favour of the plaintiff and thus there is no need to implead them.

10. Attention of the counsel for the plaintiff has also been drawn to Section 31D of the Copyright Act and it has been enquired as to how the same is not applicable.

11. The counsel for the plaintiff states that earlier licences under Phase-I and Phase-II were issued under the then Section 31, now 31A of the Act.

12. However it appears that the licence fee if any which the plaintiff is entitled to collect, has to be determined by the Copyright Board (now Intellectual Property Appellate Board) under Section 31D only and there is no free market regime, though the counsel for the plaintiff contends otherwise and refers to the dicta dated 11th January, 2019 in RFA No.18/2019 Novex Communication Pvt. Ltd. Vs. Lemon Tree Hotels Ltd.

13. Be that as it may, the counsel for the defendant No.1 appears and states that he is appearing only on noticing the suit in the Cause List and has today morning been supplied only copy of the plaint.

14. A complete set of paper book be handed over to the counsel for the defendant No.1. Advance copy be also given to the defendant No.2/its counsel, so that at this stage only they can also be heard on admissibility and on all the aforesaid aspects.

15. List on 6th March, 2019.

RAJIV SAHAI ENDLAW, J.

JANUARY 25, 2019/„bs ..