

The Indian Performing Right Society Ltd vs Gauhati Town Club & Anr on 30 January, 2013

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 30th January, 2013

+ CS(OS) 559/2010, I.A. No.3959/2010 (u/O 39 R-1 & 2 CPC), I.A. No.3038/2012 (of D-1 & 2 u/O 7 R-11 CPC) & I.A. No.3039/2012 (of D-1 & 2 u/O 7 R-11 CPC)

THE INDIAN PERFORMING RIGHT SOCIETY LTD Plaintiff
Through: Ms. Geetanjali Visvanathan and Ms.
Ayushi Kiran, Advocates.

Versus

GAUHATI TOWN CLUB & ANR Defendants
Through: Mr. Azim H. Laskar, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
RAJIV SAHAI ENDLAW, J.

I.A. No.16810/2012 (of defendants u/O 8 R-1 CPC) & I.A. No.5281/2012 (of plaintiff u/O 8 R-10 CPC)

1. The counsel for the defendants seeks adjournment. On being asked the reason, he states that his vehicle was stolen on 24th January, 2013 and the file of this suit went along with the vehicle and he will have to re-construct the file.

2. The counsel has been asked as to why on 24th January, 2013 he was carrying the file of this suit which was not listed on that date and was vide order dated 26th November, 2012 posted for today.

3. The counsel for the defendants states that some of his files remain in his car.

4. The aforesaid explanation is not found satisfactory. The request for adjournment is rejected.

5. The counsel for the defendants states that he does not want to argue the applications today.

6. The counsel for the plaintiff has been heard.

7. Vide order dated 27th March, 2012, the written statement filed by the defendants was ordered to be taken off from the records for the reason of having been filed after a gap of 390 days and 400

days respectively and without any application for condonation of delay.

8. The defendants thereafter filed I.A. No.16810/2012 for condonation of delay in filing the written statement. However, the defendants having not pressed their application today, the same is dismissed.

9. The application of the plaintiff under Order VIII Rule-10 of CPC has been considered. The suit is for injunction, restraining the defendants from organizing or providing their premises for musical shows/events where the plaintiff's repertoire is performed or communicated to the public, without obtaining a license from the plaintiff and infringing the plaintiff's copyright and also for rendition of accounts and damages. It has been inquired from the counsel for the plaintiff as to how a decree for rendition of accounts and damages can be passed under Order 8 Rule 10 of the CPC. The counsel for the plaintiff states that if the suit, in exercise of powers under Order 8 Rule 10 is decreed for relief of injunction, the plaintiff would not press for the relief of accounts and damages.

10. It thus falls for consideration whether the relief of injunction can be granted in exercise of powers under Order 8 Rule 10 CPC or the grant of relief of injunction also requires the plaintiff to lead any evidence.

11. The plaintiff in the plaint has pleaded, that it is a company limited by guarantee and registered under the Companies Act, 1956 and also registered as a Copyright Society under Section 33 of the Copyright Act, 1957; that it was established to monitor, protect and enforce the rights, interest and privileges of its members comprising of authors, composers and publishers of literary or musical works; that the members of the plaintiff have executed deeds of assignment assigning the public performing rights in respect of their literary or musical works in favour of the plaintiff for the purpose of public performance/communication to the public; that the defendant no.1 as part of its centenary year celebration, on 21st November, 2009 organised a live musical concert at the defendant no.2 Sarusajai National Games Stadium located at Guwahati, without permission of the plaintiff and without paying the requisite licence fee of the plaintiff; that in the said live musical concert, songs in which the plaintiff has rights as aforesaid were performed by the troupe invited by the defendant no.1; that the defendants no. 1 and 2 having allowed/permitted their place to be used for communication of the aforesaid literary / musical works to the public have infringed the rights of the plaintiff and are liable under Section 51(a)(i) and 51(a)(ii) of the Copyright Act. The plaintiff thus seeks a permanent injunction restraining the defendants from performing or communicating the plaintiff's repertoire to the public or from organising or providing their premises for musical shows/events where the plaintiff's repertoire is performed or communicated to the public, without obtaining a licence from the plaintiff.

12. The counsel for the defendants, though for the reasons aforesaid has no locus, but has contended that the defendants have also applied under Order 7 Rule 11 of the CPC on the ground of this Court not having territorial jurisdiction.

13. The counsel for the plaintiff has invoked the territorial jurisdiction of this Court relying on Section 62(2) of the Copyright Act.

14. Though the counsel for the defendants states that the plaintiff is based at Mumbai but it is the case of the plaintiff that the plaintiff carries on business within the jurisdiction of this Court through its branch office situated at Bikhaji Cama Place, New Delhi within the territorial jurisdiction of this Court.

15. It has been inquired from the counsel for the plaintiff whether any similar injunctions have been granted to the plaintiff.

16. The counsel for the plaintiff relies on the order dated 22nd December, 2011 of the Division Bench of this Court in RFA(OS) 32/2010 titled The Indian Performing Right Society Ltd. V. Badal Dhar Chowdhry, a perusal whereof shows that though the Single Judge of this Court had dismissed the suit of the plaintiff for the reason of the defendant against whom injunction was sought being located outside the jurisdiction of this Court but the Division Bench disposed of the appeal, though with the consent of the counsels, by directing the defendant in that suit to require any person taking the halls, auditoriums and theatres owned by them on hire for a musical evening or a function where music will be played by means of sound recording, to provide the list of sound recordings intended to be communicated to the public and by requiring such hirers to furnish a written request having been made to the plaintiff herein for grant of necessary permission and by putting a condition on the plaintiff to respond thereto within three days.

17. The counsel for the plaintiff also relies on Indian Performing Right Society Ltd. v. Debashis Patnaik 2007 (34) PTC 201 where also the defendants therein were restrained from playing of music by live or any other means, or by way of mechanical devices at their hotel without obtaining a licence from the plaintiff.

18. The counsel for the plaintiff has next invited attention to judgment dated 8th November, 2011 of another Single Judge of this Court in CS(OS) No. 2422/2007 titled Indian Performing Right Society Ltd. v. Mr. R. Krishnamurthy where also similar injunction was granted.

19. As far as the aspect of territorial jurisdiction is concerned, Section 62 (2) of the Copyright Act permits action for infringement of copyright to be instituted in the Court within whose jurisdiction the plaintiff carries on business. There is no reason for this Court to doubt the statement of the plaintiff that it carries on business within the jurisdiction of this Court. The suit is undoubtedly in respect of infringement of copyright of the plaintiff. Section 51(a)(ii) provides that copyright in a work is deemed to be infringed when any person without a licence granted by the owner of the copyright permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work. Thus the defendant no.2 Stadium having permitted for profit the defendant no.1 to use the Stadium for communication to the public of the work in which the plaintiff has copyright, is deemed to have infringed copyright. The cause of action of the plaintiff against the defendant no.2 is thus of infringement. The defendant no.1 of course by organizing the event in which the works in which the plaintiff has copyright were communicated to the public has also infringed copyright. I am therefore satisfied that this Court has territorial jurisdiction.

20. Else I find that the Division Bench also in judgment dated 22nd December, 2011 (supra) has observed that none can be permitted to violate the provisions aforesaid of the Copyright Act. The relief of injunction sought by the plaintiff against the defendants is thus nothing but a direction to the defendants to abide by law and which the defendants in any case are expected to.

21. I am therefore of the view that this Court does not require the plaintiff to lead any evidence before finding the plaintiff entitled to the decree insofar as for the relief of injunction.

22. The application of the plaintiff under Order 8 Rule 10 of the CPC is thus allowed. The suit of the plaintiff is decreed for the relief of permanent injunction. The defendants, their officers, servants, agents and representatives are restrained from performing or communicating the plaintiff's repertoire to the public or from organizing or providing their premises, organizing musical shows/events where the plaintiff's repertoire is performed or communicated to public, without obtaining a licence from the plaintiff. In consonance with the directions issued by the Division Bench in the judgment (supra), it is further directed that the defendant no.2 Sarusajai National Games Stadium shall require all persons taking the said stadium on hire for a musical evening or function where music will be played by sound recording or performed live to provide the list of sound recordings intended to be communicated to the public or performed live and either produce a No Objection from the plaintiff, if not having any rights in the said sound recordings/music/work or a licence from the plaintiff. The plaintiff is also simultaneously directed to immediately process such applications for licence/no objection so as to not delay the holding of the event for which no objection/licence is sought.

Decree sheet be drawn up. No costs.

RAJIV SAHAI ENDLAW, J JANUARY 30, 2013 bs/M