



iii. Pass an order of mandatory injunction directing the defendant to deliver and hand over to the plaintiff or its authorized representative, all infringing tapes, copies and negatives, etc. bearing the copyrighted materials of the plaintiff;

iv. Pass an order directing the defendant to pay to the plaintiff damages to the tune of Rs.1,00,01,000/- towards damages for acts of infringement committed till date with pendente lite and future interest at rate of 18% p.a. till payment of decretal amount; and further direct the defendant to pay future damages alongwith interest thereupon at the rate of Rs.1,00,000/- per week from the date of filing of the suit till the time the defendant stops infringing activities or such amount which the Hon'ble Court may determine;

v. Award costs of the present suit to the plaintiff.

2. On 05th September, 2016, this Court while issuing summons, had granted an interim injunction. The relevant portion of the injunction order dated 05th September, 2016 is reproduced hereinbelow:-

"10. Accordingly, till the next date of hearing, the Defendants, their officers, servants, agents, partners and representatives and all other acting for and on their behalf are restrained from authorizing, recording, distributing, broadcasting, causing public performance/communication to the public or in any other way exploiting the cinematograph films, sound recording and/or literary work (lyrics) and musical works (musical composition) or other work(s) or part thereof throughout India, that is owned by the Plaintiff including all works whereon the Plaintiff has shown its copyright under section 52A of the Copyright Act, 1957 or doing any other act that would lead to infringement of the Plaintiff's copyright through its Ground Cable Network."

3. Since despite service, defendant did not appear, it was proceeded ex parte vide order dated 07th November, 2016.

4. The relevant facts of the present case are that the plaintiff-Super Cassettes Industries Private Limited, is one of the largest and most reputed music companies in the country and is owner of a large repertoire of copyrighted works comprising cinematographic films, sound recordings etc. operating under the brand name T-SERIES.

5. Plaintiff has acquired a copyright in all such literary, musical and other works which it commissions and manages, through assignments from authors or other prior owners of the copyright in the same. Plaintiff's business also includes giving of licence for use of its copyrighted works to various organizations such as broadcasting organizations, television channels, FM radio stations etc.

6. The defendant No.1-Raiganj Cable TV Pvt. Ltd. is a multi system operator providing cable television services under the logo 'RCTV RAIGANJ and RCTV MOVIES' to various subscribers mainly in West Bengal and Bihar.

7. The plaintiff has filed evidence by way of affidavits of the authorized representatives (AR) of the Company and of the Investigator. It is apparent from the said affidavits, versions of which have gone unrebutted in the absence of cross-examination, that defendant has network in Bihar as well as West-Bengal. The defendant has about 1,50,000/- subscribers. Area of operation is stated by the defendant on its own website. (Ex.PW1/5)

8. In the affidavits, it has been stated that without obtaining licence from the plaintiff, the defendant has been communicating to its subscribers by way of local channels, works in which the plaintiff owns copyright, including songs such as 'Yamla Pagla Deewana', 'Tinku Jiya' and 'Charha de Rang' from the movie Yamla Pagla Deewana, 'Tujhe Pyar Karte Karte' from the film Humko Deewana Kar Gaye, the song 'Behney De Mujhe Behne De' from the film Raavan etc. Copyright certificates of the said songs have been proved in evidence to show ownership of the plaintiff [Exh. PW1/4 (a) to PW1/4(j)].

9. A recording of such infringing works on the defendant's local channels such as RCTV Raiganj has been done by the plaintiff's investigator on 08th April, 2016. The recording has been copied onto a DVD and placed on record (Exh.PW1/6). A cue sheet has been prepared showing songs played by the defendant. Each song with a remark 'T' is one in which plaintiff owns copyright. Copy of Cue Sheet is marked. Screenshots have also been placed on record.

10. It is averred in the affidavits that upon detection of infringement, a letter requesting the defendant to obtain a licence was sent on 11th June, 2016. It was delivered on 26th June, 2016. Since no response was received and the defendant did not stop infringement of copyright, legal notice dated 01st August, 2016 (Ex.PW1/10) was sent to the defendant and received on 06th August, 2016 (Ex.PW1/12). As neither any response to the said legal notice was given or the infringing activities were stopped, the present suit was filed.

11. In the opinion of this court, the plaintiff has proved ownership of songs by proving copyright certificates. Section 48 of the Copyright Act provides that the extracts of the copyright register is prima facie proof of particulars contained therein. Section 14 of the Copyright Act provides that it is the exclusive right of the plaintiff, as owner in copyright, to communicate to the public the words in question. Consequently, in terms of Section 51 of the Copyright Act, the defendant has infringed copyright of the plaintiff.

12. Since copyright of the plaintiff has been infringed, in terms of Section 55 of the Copyright Act, the plaintiff is entitled to damages as well as injunction. It is now settled law that it is sufficient for the plaintiff to show sample infringement.

13. Accordingly, a decree of permanent injunction is passed in favour of the plaintiff and against the defendant restraining the defendant, its officers, servants, agents and representatives etc. from

recording, distributing, broadcasting, public performance/communication to the public or in any other way exploiting the cinematograph films, sound recordings, literary works (lyrics) and musical works (musical composition) or other work owned by the plaintiff without any license.

14. The plaintiff has also claimed damages. On affidavit, it has been stated that the defendant has committed continuous breach of the plaintiff's copyright without paying any licence fee which was due to the plaintiff. Compensatory damages as also punitive damages have been claimed since the acts of the defendant not only pose a grave threat to the entire creative business of the plaintiff, but also affect the livelihood of many creative artists. The business of the plaintiff has also been affected. Further contention being that in similar cases, the plaintiff has been granted the relief of damages. The plaintiff has thus also made out a case for entitlement of damages.

15. However, as a Coordinate Bench of this Court in CS(OS) No.1882/2014 has as recently as 16th May, 2017 awarded damages quantified at Rs.21 lakhs, this Court in the present case also quantifies the damages at the rate of Rs.21 lakhs and awards the same to the plaintiff. Cost of the suit also be granted in favour of the plaintiff.

16. Consequently, the present suit stands decreed. Decree sheet be drawn accordingly. File be consigned to the record room.

MANMOHAN, J MAY 22, 2017 KA