

Phonographic Performance Ltd vs Bunglow - 9 And 99 Ors on 24 December, 2018

Author: Bharati H. Dangre

Bench: Bharati H. Dangre

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

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3061 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1686 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Iron Hill Brewery & Ors. ...Respondents

WITH

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3062 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1687 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Bar District 6 Pub Brewer & Kitchen
Prism Infracon Ltd & Ors. ...Respondents

WITH

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3063 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1688 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Bunglow-9 and 99 Ors. ...Respondents

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WITH
NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3065 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1689 OF
2018

Phonographic Performance Ltd.
Versus
Moksh Lounge & Ors.

...Plaintiff
...Respondents

WITH
NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3066 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1690 OF
2018

Phonographic Performance Ltd.
Versus
Farzi Cafe & Ors.

...Plaintiff
...Respondents

WITH
NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3067 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1691 OF
2018

Phonographic Performance Ltd.
Versus
Health View Resort Pvt. Ltd. (Keys Hotel)
and Ors.

...Plaintiff
...Respondents

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WITH

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3068 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1692 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
The Ravzi & Ors. ...Respondents

WITH

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3069 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1693 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Pragathi Resorts & Ors. ...Respondents

WITH

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3070 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1694 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Hotel Radisson Chandigarh & Ors. ...Respondents

WITH

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NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3071 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1695 OF
2018

Phonographic Performance Ltd. ...Plaintiff

Versus
Nocturne & Ors. ...Respondents

WITH

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3072 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1696 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Orbis The Passion Hotels & Ors. ...Respondents

WITH

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3073 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1697 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Hotel Madhuban & Ors. ...Respondents

WITH

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NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3074 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L)1698/2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Balaji Agora Mall & Ors. ...Respondents

WITH

NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3075 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) 1699 / 2018

Phonographic Performance Ltd. ...Plaintiff

Versus
Hotel Hilton & Ors. ...Respondents

WITH
NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3076 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L) NO.1700 OF
2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Renaissance Lucknow & Ors. ...Respondents

WITH
NOTICE OF MOTION IN COMMERCIAL
DIVISION MATTERS (L) NO.3080 OF 2018
IN
INTELLECTUAL PROPERTY RIGHTS SUITS (L)1701/2018

Phonographic Performance Ltd. ...Plaintiff
Versus
Fortune Select Regina & Ors. ...Respondents

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Mr.Kevik Setalwad, Senior Advocate a/w Mr.Akshay Patil,
Mr.Anup Surve, Mr.Amogh Singh, Ms.Nilam Kadam and
Mr.Hero Ramchandani i/by Mr.D.P. Singh for the Plaintiffs in
All Matters.

Mr.Mustafa Safiyuddin with Mr.Hasan Safiyuddin and
Mr.Raghav Ganodiya i/b ABH Law LLP for Respondent No.18
in NMCDL 3063 of 2018 in COMIPL No.1688 of 2018.

Mr.Rajiv Narula with Ms.Sonal Ghiya i/b Jhangiani Narula &
Associates for Respondent No.47 in NMCDL 3063 of 2018 in
COMIPL NO.1688 of 2018.

Ms.Vanditta Mahhotra Hegde with Ms.Shruti Karkhanis for
Respondent No.45 in NMCDL 3063 of 2018 in COMIPL
No.1688 of 2018.

Ms.Rohini Jadahv for Respondent Nos.91 and 96 in NMCDL 3063 of 2018 in COMIPL No.1688 of 2018.

Mr.Ramesh Soni with Ms.Sarrah Khambati and Mr.Pranay Kamdar i/b Wadia Ghandy & Co. for Respondent No.6 in NMCDL 3063 of 2018 in COMIPL No.1688 of 2018.

Mrs.Swati Sawant i/b M/s.S.K. Legal Associates for Respondent No.72 in NMCDL 3063 of 2018 in COMIPL No.1688 of 2018.

Mr.Sudilal Mani i/b Mahesh Menon & Co for Respondent No.12 in COMIPL No.1691 of 2018.

Mr.S.D. Shetty a/w Mr.Rakesh Singh i/b M.V. Kini & Co. for Respondent No.7 in NMCDL 3068 of 2018 in COMIPL No.1692 of 2018.

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Mr.Deshbandhu Jaiswal for Respondent Nos.1 to 32 in COMIPL No.1700 of 2018.

Ms.Anuja Nair i/b Khurana & Khurana for Respondent Nos.16,19 & 22 in NMCDL 3068 of 2018 in COMIPL No.1692 of 2018.

Mr.Anil K. Singh for Respondent Nos.16 & 17 in NMCDL 3061 of 2018 in COMIPL No.1686 of 2018, for Respondent Nos.18 and 19 in NMCDL 3062 of 2018 in COMIPL No.1687 of 2018, for Respondent Nos.99 and 100 in NMCDL 3063 of 2018 in COMIPL No.1688 of 2018, for Respondent Nos.35 and 36 in NMCDL 3065 of 2018 in COMIPL No.1689 of 2018, for Respondent Nos.22 and 23 in NMCDL 3066 of 2018 in COMIPL No.1690 of 2018, for Respondent Nos.27 and 28 in NMCDL 3067 of 2018 in COMIPL No.1691 of 2018, for Respondent Nos.30 & 31 in NMCDL 3068 of 2018 in COMIPL No.1692 of 2018, for Respondent Nos.23 and 24 in NMCDL 3069 of 2018 in COMIPL No.1693 of 2018, for Respondent Nos.81 and 82 in NMCDL 3070 of 2018 in COMIPL No.1694 of 2018, for Respondent Nos.15 and 16 in in NMCDL 3071 of 2018 in COMIPL No.1695 of 2018, for Respondent Nos.13 and 14 in NMCDL 3072 of 2018 in COMIPL No.1696 of 2018, for Respondent Nos.19 and 20 in NMCDL 3073 of 2018 in

COMIPL No.1697 of 2018, for Respondent Nos.38 and 39 in NMCDL 3074 of 2018 in COMIPL No.1698 of 2018, for Respondent Nos.10 and 11 in NMCDL 3075 of 2018 in COMIPL No.1699 of 2018, for Respondent Nos.31 and 32 in NMCDL 3076 of 2018 in COMIPL No.1700 of 2018 and Respondent Nos.3 & 4 in NMCDL 3080 of 2018 in COMIPL No.1701 of 2018.

CORAM : SMT.BHARATI H. DANGRE, J.

DATED : 24th DECEMBER 2018 (VACATION COURT) Tilak 8 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc P.C. 1 The plaintiff Company has approached this Court for grant of a perpetual order and injunction, thereby restraining the 98 Companies who are impleaded as defendants from publicly performing or in any manner, using the sound recording work of the plaintiff on the eve of the New Year or Christmas Parties which are to be held at the end of this year. A Notice of Motion has been taken out seeking an ad-interim order restraining the defendants from performing without licence being obtained from the plaintiff company.

The plaintiff company claims to be a licensee of sound recording for non-physical use i.e. for all forms of exploitation of copyrights in sound recording which includes the public performance in hotels and restaurants and also radio and T.V. broadcasting etc. It claims to have acquired exclusive rights over copyright in sound recording limited to non- physical usage from its members and the plaintiffs claim that his repertoire consists of more than 20 lakh sound recordings, including film and non-film genres in Hindi and other regional Tilak 9 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc languages. It also claims that it has acquired the rights from various music labels through exclusive assignment deed and by these deeds, the plaintiff becomes the owner of the sound recordings. A specimen of one such Assignment Deed has been placed on record. The plaintiff claims that on the basis of such Assignment Deed, it is authorized to grant licence for use of such sound recordings for public performance and therefore, it claims that the rights which are assigned to it are on exclusive basis and whenever the sound recordings are put to use by any of the defendants, it requires a prior permission of the plaintiff and can be performed only on issuance of a licence in their favour.

Notice of Motion is taken out in the suit praying for an order and injunction restraining the defendants from any public performance or using the sound recording works of the plaintiff, without obtaining license from the plaintiff. 2 I have heard the learned Senior Counsel Mr.Kevic Setalwad appearing for the plaintiff and the respective counsel appearing for the defendants. What is remarkably noticed by Tilak 10 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc this Court is that at the end of every year, this peculiar litigation lands up in this Court and hurriedly, the reliefs are sought. The orders which have been placed on record are of the three consecutive years and are in the nature of ad-interim orders, but the proceedings did not ever reach finality. At one occasion, there was non-prosecution of the proceedings and the suit came to be dismissed in default, whereas in one case, the parties reached at an amicable solution of obtaining license from the Company of the plaintiff, and therefore, the merits of the suit was not gone into. Learned counsel appearing for the respondents who have also placed their replies on record, dispute the locus of the plaintiff to

institute the proceedings and his claim for perpetual injunction on the ground that the Deed of Assignment do not transmit complete unrestricted right in favour of the plaintiff. My attention is also invited to Section 19(2) of the Copyrights Act and also to the various clauses of the Deed of Assignment. It is argued on behalf of the defendant that the identification of the work is conspicuously absent in the deed and it is also not clear as to whether the deed is in existence as on date.

Tilak 11 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc 3 I have carefully perused the said terms and conditions of the Assignment Deed. The Assignment Deed categorically assigns in favour of the plaintiff, the partial and restricted assignment of rights in sound recordings and by this deed, the music label has granted its non-physical rights in the sound recording catalogue vested in and exclusively controlled by music label for the present and in future, during the term and in the territory to the plaintiff, primarily by licensing to various licencees as owner of the assigned rights under Section 30 of the Copyrights Act, 1957. 'The Music Catalogue' has been assigned a definite connotation in the said agreement/deed to mean all past, present and future sound recording works in which copyright subsists and those sound recordings which are owned by the Music label or controlled by Music label through the exclusive contractual arrangements and in respect of which the Music Label has lawfully entered into the deed. The most important clause in the said deed is Clause No.8 which reads to the following effect :

Tilak 12 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc "8.1 The Music Label agrees that PPL is entitled to grant licenses u/s 30 of Copyright Act, on ownership basis (as covered by sub-Section 18(2) of Copyright Act) for all the repertoire consisting of the Music Catalogue of the Music Label, subject to the Rights Assigned, during the term and within the territory herein."

The specimen Assignment Deed which is placed on record also refers to the duration for which the deed will be enforced and also the jurisdiction within which it will operate. It is also to be noted that the schedule appended to the said deed in form of Music Catalogue categorically sets out the details of the work owned and/or exclusively controlled by music label and in respect of which the copyright has been assigned to the plaintiff and the deed categorically mentions that the Music Label agree to provide detailed particulars of music catalogue to plaintiff in full as per prescribed format as included in Schedule 'A'. There is also a provision for alteration and deletion. The said Assignment Deed as it is already mentioned is only one such specimen Assignment Deed and the plaintiff claims that he has a list of Assignor Music Label on its website along with the name of the album and sound recordings. The Tilak 13 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc plaintiff who claims to be the assignee/owner of the copyright in various sound recordings by virtue of the Assignment Deed is entitled to act as licensee for sound recordings for public performance and for other purposes as set out in the said deed. It is thus entitled to issue licence and that is the basis on which the plaintiff company has filed the present suit seeking relief and declaration as set out in its prayer clause along with the Notice of Motion.

4 I am prima facie satisfied that the plaintiff is very much competent to initiate the said proceedings since the plaintiffs repertoire of sound recording is put to use without a licence, specifically in light

of the orders passed on earlier instance by this Court when this Court had asked the defendants to obtain licence. By the orders placed before me, it is amply clear that the defendants cannot hold their events without licence of the plaintiff in respect of the music recording in its repertoire. The plaintiff has also alleged infringement of his copyright subsisting in their sound recording.

Tilak 14 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc 5 In terms of the order dated 22 nd December 2018, two defendants have tendered their affidavit but rest of them have not. The pleadings are yet to be completed. Today, what is only sought and moved before this Court is the Notice of Motion by virtue of which the ad-interim relief is sought. In light of the prima facie case recorded by me where I have already noted that the plaintiff has a right in form of a copyright owner as contemplated under Section 30 of the Copyright Act 1957, he is entitled to claim that no music over which he claims to have copyright would be played/performed in any event without his licence. The submission of the defendants about the maintainability and objection as to the claim of the plaintiff that he is not the first owner and he has not tracked as to who is the original owner nor his title being established, can be gone into at the time when the suit itself is tried. Another objection in respect of the misjoinder of parties which is raised by the defendants can also be taken care of at the time of final determination. One another objection in respect of deed of assignment, that it is not properly stamped, Tilak 15 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc and therefore, it is impermissible as evidence in law would also be required to be gone into by the Court while dealing with the merits of the suit which is filed by the plaintiff. However, since the events are scheduled on 25 th December 2018 and also on 30th/31st December 2018, it is agreed by the defendants who are represented by their respective counsels that as far as ad- interim ad-interim relief is concerned, the defendants agree that they would deposit an amount equivalent to the tariff which is displayed on the web-site of the plaintiff in this Court, without prejudice to their rights and contentions, including the issue as to the locus of the plaintiff and its title to claim the relief as sought in the suit. On such amount being deposited, the plaintiff company shall issue a licence in favour of those defendants who make such deposit, forthwith. It is made clear that the amount which is required to be deposited by each defendant would be equivalent to the sum, falling in the slot which has been displayed by the plaintiff company and at present, it is based on rough assumption as to the number of persons attending the event and also the approximate duration for which the licence is sought. It will, however, be subject to Tilak 16 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc the final adjustments and to the details which would be submitted by the event performer after the event is over.

It is re-iterated that without prejudice to the legal submissions and the right of the plaintiff, and so also the defendants, at the end of the event, the defendants are directed to submit the recordings of the entire event that would be conducted to the plaintiff within four weeks along with the actual figures about the capacity for which the event was organized and based on the said estimation, the final accounts would be drawn by the plaintiff company and the amount deposited will be accordingly adjusted. The entire exercise of ascertaining the final details of recording of the events and the adjustments to be done should be completed by the plaintiff within period of four weeks thereafter. The plaintiff is directed to file an affidavit giving the final calculations, upon which the defendants will also be afforded an opportunity to deal with the said calculations and thereupon the amount deposited in this Court would be adjusted.

Tilak 17 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc It is to be noted that all the defendants are not represented before this Court today. The defendants who are present through their respective counsels have accorded their consent to the above arrangement. It is further directed that it will be imperative for all the other defendants who are not represented before the Court to obtain a licence from the plaintiff company before the event is organized on payment of the fees in terms of schedule as indicated on the website of the plaintiff company.

6 The contention of both the parties as regards the plea of maintainability and the applicability of the provisions of Copyright Act, qua the rights of the plaintiff as the assignee or owner of the copyright would be dealt with when the Notice of Motion would be finally heard by the Regular Court. The consent accorded by the defendants to obtain the licence before publicly performing or using the sound recording work of the plaintiff by obtaining a licence is without prejudice to their legal rights and contentions on payment of stipulated licence fee. The deposit of the fees would be treated as Tilak 18 501-nmcdl-3061-18 -- 516-nmcdl-3080-18.doc without prejudice to their rights and contentions. The statements made by the parties are accepted as undertaking.

Learned Senior Counsel Shri Setalwad assures this Court that the present suit, in any contingency, would not be withdrawn and it would be properly prosecuted and taken to its logical end so that the situation of this Court being flooded with litigation at the end of every year, specially on the Eve of New Year can be avoided.

Motion be listed after six weeks.

(SMT.BHARATI H. DANGRE, J.)