

Phonographic Performance Limited vs Al-Hamd Tradenation on 12 July, 2024

\$~18

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 564/2024, I.A. 33043/2024, I.A. 33040/2024, I.A. 33041/2024, I.A. 33040/2024 & I.A. 33039/2024

PHONOGRAPHIC PERFORMANCE LIMITED

Through:

Mr. Chander M. Lall, S
with Mr. Ankur Sangal,
Roy, Mr. Ankit Arvind,
Vinayak Sinha, Mr. Sha
and Mr. Abhinav Bhalla

versus

AL-HAMD TRADENATION

.....Defend

Through: Mr. Aditya Ganju, Ms. Pallavi Sh
Ms. Honeyshya Raj and Ms.
Shambhavi Mishra, Advocates.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA
ORDER

% 12.07.2024 I.A. 33043/2024 (Exemption from filing clearer copies)

1. The present is an application under Section 151 of the Code of Civil Procedure, 1908 ("CPC") seeking an exemption from filing pleadings with proper margins, original documents/certified copies, typed copies/documents with appropriate margins and English translation etc.

2. Exemption is granted, subject to all just exceptions.

3. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance, within four weeks from today or before the next date of hearing, whichever is earlier.

4. Accordingly, the present application is disposed of. I.A. 33042/2024 (Seeking enlargement of time for filing court fees)

1. The present application has been filed by the plaintiff seeking enlargement of time for filing court fees.

2. Learned senior counsel appearing for the plaintiff submits that the Court fee shall be paid within the period of two weeks.

3. Let the needful be done, within the time granted.

4. With the aforesaid direction, the present application is disposed of. I.A. 33041/2024 (Exemption from filing additional documents)
5. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908, as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
6. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the DHC (Original Side) Rules, 2018.
7. Accordingly, the present application is disposed of. I.A. 33040/2024 (Exemption from instituting pre-litigation mediation)
8. The present is an application under Section 12A of the Commercial Courts Act, 2015 read with Section 151 of the CPC for exemption from instituting Pre-institution Mediation.
9. Having regard to the facts of the present case and in the light of the judgment of Supreme Court in the case of Yamini Manohar Versus T.K.D. Keerthi, 2023 SCC OnLine SC 1382, and Division Bench of this Court in Chandra Kishore Chaurasia Versus RA Perfumery Works Private Ltd., 2022 SCC OnLine Del 3529, exemption from attempting Pre-institution Mediation, is granted.
10. Accordingly, the application stands disposed of. CS(COMM) 564/2024
11. Let the plaint be registered as a suit.
12. Issue summons to the defendants. The counsel appearing on behalf of the defendant accepts summons.
13. Let written statement be filed by the defendant within 30 days from the date of receipt of summons. Along with the written statement, the defendants shall also file affidavit of admission/denial of the document of the plaintiff, without which the written statement shall not be taken on record. Liberty is given to the plaintiff to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiff, affidavit of admission/denial of documents filed by the defendant, be filed by the plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
14. List before the Joint Registrar for marking of exhibits on 02nd August, 2024.
15. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 33039/2024 (under Order XXXIX Rules 1 & 2 of CPC)

16. The present application has been filed under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure ("CPC") 1908 praying for interim injunction against the defendant.

17. Learned senior counsel appearing for the plaintiff submits that the present suit has been filed against the defendant seeking to restrain it from infringing the plaintiff's copyright in its repertoire of sound recordings. It is submitted that there is an imminent threat that the defendant will use and exploit the copyrighted sound recordings of the plaintiff in its event, amounting to copyright infringement.

18. It is submitted that the plaintiff owns and controls the public performance rights of numerous music labels and has a repertoire, which contains a number of international and domestic sound recordings.

19. It is submitted that the plaintiff is the owner of the copyright in the sound recordings in its repertoire on the basis of assignment of the relevant copyrights in its favour by the several owners. It is submitted that the plaintiff has the public performance and broadcasting rights in sound recordings produced by various music labels, who have assigned/transferred the said right. Thus, it is submitted that these assignors of the plaintiff have executed assignment deeds under Section 18 of the Copyright Act, 1957 in respect of their sound recordings with the plaintiff, wherein, they have assigned inter alia the public performance and broadcasting rights of the sound recording, to the plaintiff.

20. It is submitted that details of sound recordings in which the plaintiff has copyright, is available on the plaintiff's website <https://www.pplindia.org/songs>, which provides express notice of the plaintiff's rights in the sound recordings to any user. It is further submitted that plaintiff issues licenses under Section 30 of the Copyright Act for communication/public performance of its vast repertoire of sound recordings. The plaintiff grants licenses authorising the use of its entire repertoire on as-is-where-is basis to its licensees.

21. It is further submitted that any communication/public performance of sound recordings forming a part of the plaintiff's repertoire, without an appropriate license, is an infringement of the copyright under Section 51 (a)

(i) of the Copyright Act, 1957.

22. It is submitted that defendant is a company, which is organising an event in a restaurant called "Lutyens", located in Mehrauli Gurgaon Road, New Delhi-110030 on 14th July 2024, wherein, the defendant is planning to use and exploit the plaintiff's copyrighted sound recordings.

23. Thus, it is submitted that the defendant was informed by the restaurant that in order to exploit the sound recordings of the plaintiff, it would need to take a license from the plaintiff. The defendant, thus, wrote to the plaintiff vide E-mail dated 02nd July 2024, refusing to take a license from the plaintiff at the current tariff of the plaintiff. It is submitted that the defendant in the said E-mail stated that while it was aware that the license of the plaintiff would amount to Rs. 55,440/-,

it was only willing to pay an amount of Rs. 16,500/- as the license fees.

24. It is submitted that the defendant also threatened that in case the plaintiff was not agreeable to issue the license at this discounted rate, the defendant would deposit the amount in the Court, and take compulsory license under Section 31 (1) (a) of the Copyright Act, 1957. It is further submitted that plaintiff responded to the aforesaid E-mail of the defendant via E-mail dated 02nd July 2024, stating that it would not be able to issue a license, at the rate at which the defendant was quoting.

25. It is submitted that disregarding the statements made by the plaintiff, the defendant sent an E-mail dated 03rd July 2024 insisting that the plaintiff issues a license to it, at the rate of Rs. 16,500/-. Thus, it is submitted that illegal use of the plaintiff's copyrighted works by the defendant will negatively impact the plaintiff's licensing activity. It is further submitted that the defendant, through its conduct, is attempting to take benefit of the hard work and investments made by the plaintiff's assignors in producing, acquiring and promoting their content and the investment of the plaintiff in acquiring the rights of public performance of the sound recordings from its various assignors.

26. Learned senior counsel appearing for the plaintiff has drawn the attention of this Court to Section 30 (c) of the Copyright Act, 1957 to submit that as per the Copyright Act, 1957, a copyright shall subsist in a sound recording. He further relies upon Section 14 (e) of the Copyright Act, 1957, to submit that the meaning of copyright in sound recording, pertains to communicating the sound recording to the public.

27. Learned senior counsel has also drawn the attention of this Court to Section 51 of the Copyright Act, 1957 to show various instances when copyright in a work, shall be deemed to be infringed.

28. Learned Senior Counsel for the plaintiff draws the attention of this Court to Section 31 of the Copyright Act to submit that the present case would fall under Section 31(1)(a), and not Section 31(1)(b) of the Copyright Act, 1957.

29. Learned Senior Counsel for the plaintiff submits that in the present case, the plaintiff has neither refused to give license to the defendant, nor has refused to allow the performance in public, of the work, of which the plaintiff, holds a copyright. Thus, he submits that the contentions raised by the defendant with respect to the reasonableness of the license fees charged by the plaintiff, cannot be raised by the defendant. He further submits that such a contention can be raised only in cases of broadcasting, which is not the case in the present matter.

30. Issue notice.

31. Notice is accepted by learned counsel appearing for the defendant.

32. Learned counsel appearing for the defendant vehemently opposes the present petition. He submits that the defendant herein has also filed a petition, being CO (COMM.IPD-CR) 8/2024, wherein, the defendant herein has prayed for compulsory license. He, thus, submits that the

defendant cannot be forced to pay any unreasonable demand of the plaintiff.

33. Having heard learned counsel appearing for the parties, this Court notes that vide order dated 17th December 2021 in CS (COMM) 671/2021, a Coordinate Bench of this Court had categorically held that the copyright in sound recordings, which can be exploited by a person, has to be protected. The relevant portion of the order dated 17th December, 2021, reads as under:

"In view of the fact that a clear prima facie case has been established in favour of the plaintiff and that the considerations of balance of convenience and irreparable loss would also justify grant of interim relief, till the next date of hearing, the defendant is restrained from exploiting or using any sound recordings or other work in which the plaintiff holds copyright and as would tantamount to infringement of the said copyright held by the plaintiff. This would also include sound recordings which may be in the process of being exploited by the defendant in connection with the Work Expo Exhibition being presently held at Pragati Maidan."

34. Similarly, this Court notes that vide order dated 21st March 2024 passed in CS (COMM) 250/2024, a Coordinate Bench of this Court, in similar circumstances, had passed interim directions, in the following manner:

"Accordingly, till the next date of hearing, an ex-parte ad interim injunction is passed against defendants in the following terms:

(i) Defendants, its directors, partners or proprietors, and any other person working for and on their behalf are restrained from exploitation/use of plaintiff's copyrighted works in the repertoire available on plaintiff's website 'https://www.pplindia.org/songs' at any of its premises including but not limited to the list of outlets which have been made a part of documents of the present suit, which amounts to infringement of plaintiff's copyright."

35. Considering the aforesaid, it is manifest that the copyright of the plaintiff in the sound recordings owned by it, has to be protected, and cannot be allowed to be infringed.

36. Accordingly, it is held that the plaintiff has established a prima facie case and balance of convenience also lies in favour of the plaintiff and against the defendant. If the copyright of the plaintiff is not protected, the plaintiff shall suffer irreparable damage.

37. Considering the aforesaid, it is directed that in case the defendant wishes to use the sound recording owned by the plaintiff, the defendant shall be free to approach the plaintiff for obtaining license. It is directed that in case the defendant approaches the plaintiff for taking a license, the defendant shall pay license fees, as demanded by the plaintiff.

38. At this Stage, learned Senior Counsel for the plaintiff submits that in case the defendant approaches the plaintiff and is willing to pay the license fees as demanded by it, the plaintiff is

willing to grant voluntary license to the defendant for the event, which is being organised by the defendant, on 14th July 2024.

39. Let reply be filed within a period of four weeks.

40. Rejoinder, if any, be filed within a period of two weeks, thereafter.

41. List before the learned Joint Registrar (Judicial) on 02nd August, 2024.

42. List before the Court on 19th September, 2024.

MINI PUSHKARNA, J JULY 12, 2024/MR