



Sharayu Khot.

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

INTERIM APPLICATION (L) NO. 32463 OF 2024
IN
COMMERCIAL IPR SUIT (LO NO. 32385 OF 2024

Phonographic Performance Limited

...Applicant/
Plaintiff

Versus

Neo Snow Amusements and Parks India
Private Limited & Ors.

...Defendants

Mr. D.P. Singh a/w Mr. Asmat Nimbalkar, Mr. Neeraj Nawar, Mr. Anil
Kumar Singh i/b. Mr. D. P. Singh for the Plaintiff.

CORAM : R.I. CHAGLA J

DATE : 24 October 2024

ORDER :

1. Heard the learned counsel for the Applicant / Plaintiff.
2. This Court is informed that the Defendant were served with notice. Affidavit of service is tendered, which is taken on record. None appears on behalf of the Defendants.

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3. The Plaintiff claims to own and control as owner / exclusive licensor the public performance rights of around 400 music labels, with more than 70 lakh of international and domestic sound recordings. It claims to be exclusively entitled to grant licences for communication to the public / public performance of its repertoire of sound recordings under Section 30 of the Copyright Act, 1957. It is stated that the details of such sound recordings are available on its website, as specifically mentioned in paragraph 6 of the Plaint.

4. The learned Counsel appearing for the Plaintiff submits that the Plaintiff has been issuing event-specific or annual licences for broadcast of such sound recordings in which, the Plaintiff holds copyrights and assignment deeds have been executed with various third parties in this context.

5. It is alleged that in the premises of the Defendants, sound recordings of which, the Plaintiff holds copyrights, have been unauthorizedly broadcasted, thereby infringing the rights. The Plaintiff has placed on record affidavit of its representative who claimed to have visited the premises of the Defendants on 2nd October 2024 when some of the sound recordings, for which the Plaintiff claims copyright, were allegedly played. Agreement is also

placed on record.

6. The Plaintiff had sent a legal notice on 29th July 2024 to the Defendants to desist from such activities.

7. Learned counsel appearing on behalf of Plaintiff has referred to a Suit which has been filed by Defendant, being OC Suit No. 10 of 2024 against the Plaintiff herein before the District Judge, Darjeeling for groundless threat of legal proceedings, and by order dated 19 September 2022, the District Judge, Darjeeling had restrained the Plaintiff from causing any kind of disturbance in running the hotel and restaurant business of Hotel Appolo & Tours Private Limited within its hotel premises as mentioned in paragraph No.1 of the Plaint till disposal of the Suit.

8. Learned counsel appearing on behalf of Plaintiff has submitted that Section 60 of the Copyright Act, 1957 provides a remedy in case of groundless threat of legal proceedings, and the proviso thereof provides that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him. He has

accordingly submitted that this proviso in Section 60 of the Copyright Act, 1957 will apply in the present case as the Plaintiff has filed the present Suit for infringement of copyright claimed by him and hence the remedy adopted by Defendant herein before the District Judge, Darjeeling cannot bar the present Suit being entertained by this Court as Section 60 will not apply in view of the proviso to that Section. He has accordingly submitted that the present Interim Application seeking ad-interim relief in terms of prayer clause (a) be granted.

9. Learned counsel for the Plaintiff has pressed for grant of urgent ad-interim reliefs, for the reason that the actions of the Defendants are resulting in continuous infringement of the copyrights held by the Plaintiff. The learned counsel further states that in the absence of ad-interim relief, the Plaintiff is likely to suffer grave and irreparable loss, due to the continuing infringement of its copyrights.

10. I find much merit in these submissions. The Suit filed by the Defendants in the District Court, Darjeeling will not bar this Court from entertaining this Suit and passing *ad-interim* order. A strong *prima facie* case has been made out by the Plaintiff. Further,

the balance of convenience is also in favour of the Plaintiff and they are likely to suffer grave and irreparable harm, loss, if the relief sought for is not granted. The Defendants have chosen not to appear before this Court, despite service and hence, ad-interim relief deserves to be granted.

11. In view of the above, there shall be ad-interim relief in terms of prayer clause (a), which reads as follows:

“(a) That pending the hearing and final disposal of this Suit, this Hon’ble Court be pleased to issue an order of injunction against restraining Defendant, its partners, directors, their servants, employees, agents, assignees, licensees, representatives, third party event management companies, or otherwise and/or any person claiming through them or acting on their behalf, from publicly performing or in any manner communicating the sound recordings of the songs assigned and authorized to the Plaintiff or allowing their premises or any premises under their control to be used for the said purposes, without obtaining non-exclusive public performance rights in sound recordings from the Plaintiff, or otherwise infringing the copyright in any work owned and protected by the Plaintiff;”

12. List the Application for further consideration on 19 November 2024.

13. Ad-interim relief granted by this Court shall continue to operate till next date.

[R.I. CHAGLA J.]