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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: August 09, 2016

Decided on: August 12, 2016

+ **CS (OS) 2068/2015 & IA No. 14261/2015**

**THE INDIAN SINGERS' RIGHTS ASSOCIATION** ..... Plaintiff  
Through: Mr. Pravin Anand with Mr. Dhruv  
Anand, Ms. Udit Patro and Mr. Shamim  
Nooreydzan, Advocates.

versus

**CHAPTER 25 BAR AND RESTAURANT** ..... Defendant  
Through: Ex parte.

**CORAM: JUSTICE S. MURALIDHAR**

**J U D G M E N T**

1. This is a suit by the Indian Singers' Rights Association ('ISRA') filed against Chapter 25 Bar and Restaurant operating at the Metropolitan Mall in Pushp Vihar, New Delhi.

2. The prayers in the suit are for a permanent injunction restraining the Defendant and all other acting for and on its behalf from communicating to the public the Plaintiff's repertoire comprising of Performer's performances of all its members and that of the members of its sister societies which it is authorized to administer in India without paying royalties to and obtaining a clearance from the Plaintiff Society or doing any other that will infringe the Plaintiff's Performer's rights through any medium including but not limited

to Radio Stations, TV and usage by Mobile Companies and violating the Right to Receive Royalties (the R3) and their Performer's Rights.

3. The suit was filed along with an application for interim injunction. Summons was issued in the suit and notice in the application for stay on 18<sup>th</sup> August 2015. The order dated 10<sup>th</sup> September 2015 reflects that Mr. Saurabh Yadav, Defendant No.1 was deleted from the array of parties as he was a tenant and was not available in the said address. The tracking reports of the postal authority and the courier agency showed that notice had been served and delivered on Defendant No.2 (now the sole Defendant) i.e. the Chapter 25 Bar and Restaurant. On finding that no one was appearing on its behalf, the Court set the sole Defendant *ex parte*.

4. In IA No. 14261 of 2015, by the order dated 10<sup>th</sup> September 2015 the Court issued an order of interim injunction restraining the Defendant and everyone acting on its behalf from “communicating to the public, the Plaintiff’s repertoire comprising of Performances of all its members and works of its societies which the Plaintiff is authorised to administer in India, without obtaining a "Performer's Rights Clearance Certificate" from the Plaintiff or doing any other act infringing the Plaintiff’s members Performer’s rights till further orders.”

5. The Plaintiff thereafter filed the affidavit of Mr. Sandeep Tandon, a constituted attorney of the Plaintiff. The unrebutted evidence led by the Plaintiff depicts the following uncontested facts.

6. The Plaintiff is a company limited by guarantee registered under Section

25 of the Companies Act, 1956. The certificate of incorporation dated 3<sup>rd</sup> May 2013 is Ex.PW-1/2. After the amendment to the Copyright Act, 1957 by the Copyright (Amendment) Act, 2012, the Plaintiff was one of the first societies to be registered for protection of Performers' Rights described under Section 38 of the Copyright Act, 1957 ('Act').

7. Under Section 38 A (1)(a)(iii) of the Act, the performer's right which is an exclusive right includes the right to make a sound recording or a visual recording of the performance including "communication of it to the public". The proviso to Section 38 (2) of the Act states that notwithstanding anything contained in the said sub-section "the performer shall be entitled for royalties in case of making of the performances for commercial use."

8. Section 39 A (1) of the Act *inter alia* states that Section 18 shall "with necessary adaptations and modifications" apply in relation to the reproduction right in any broadcast and the performer's right in any performance as they apply in relation to copyright in a work. Section 18 provides for assignment of copyright. The fourth proviso to Section 18(1) reads as under:

"Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void."

9. The Plaintiff's members are Singers as a category of Performers. Each

Singer is the Performer of the performance and/or the owner of the Performer's right in a song i.e. the 'Performer Owner' of a song and each singer apart from the exclusive Performer's right also has the inalienable Right to Receive Royalty (the R3) under section 38A of the Act for the commercial exploitation of their performance as a Singer.

10. The certificate of registration of the Plaintiff society which is dated 14<sup>th</sup> June 2013 is exhibited as Ex. PW-1/3. The Plaintiff has placed as Ex. PW-1/7 the list of its members which includes renowned Indian singers. Its Board of Directors includes the legendary Lata Mangeshkar and other well known singers including Sonu Nigam, Alka Yagnik, Kumar Sanu, Pankaj Udhas. Many other well known singers are also its members. The Plaintiff has two categories of members i.e. ordinary members who are individual performers and associate members who are the legal heirs of the deceased performer above the age of 18 years. Each member of the Plaintiff has a separate Deed of Exclusive Authorisation (DEA) authorising the Plaintiff in respect of their R3 under Section 38A of the Act. This is in respect of their performances including performances in future. The Plaintiff is, therefore, the exclusive owner of the performance rights to the extent of the R3 under Section 38A of the Act in respect of its members. Sample authorisation deeds have been exhibited as Ex. PW-1/9 collectively.

11. It is stated that the Plaintiff's tariffs work out only to a negligible and insignificant percentage of the turnover of radio stations, TV and mobile companies, event organisers, shops, departmental stores, hotels, showrooms, emporiums, hotels and restaurants etc. The Plaintiff's tariffs are displayed on

its website. A printout has been exhibited as Ex.PW-1/11.

12. The case of the Plaintiff is that the Defendant Chapter 25 Bar and Restaurant was found in the month of April 2015 by an independent investigator engaged by the Plaintiff to be playing music in its premises. The investigator recorded on a sample basis, the songs containing the performances of singers belonging to the Plaintiffs repertoire which were being played at the Defendant bar and restaurant. The original CDs containing the infringing recordings have been exhibited as Ex.PW-1/13 and the Investigator's affidavit is Ex.PW-1/14. The requirements of Section 65-B of the Evidence Act 1882 having been satisfied, the Court takes the said evidence on record.

13. A table depicting the list of songs belonging to the Plaintiff's repertoire which was communicated to the public as noted by the Plaintiff's Investigator including the names of singers, has been set out in para 22 of the affidavit of Mr Tandon. It is stated that the list was only a sample list for a short period of two hours during which Investigator was present at the Defendant's bar and restaurant on 9<sup>th</sup> and 11<sup>th</sup> April 2015. The Plaintiff states that each of the singers listed in the table have executed DEAs for the administration of their Performer's Right in respect of their performances including future performances in favour of the Plaintiff.

14. The Plaintiff addressed a cease and desist letter dated 16<sup>th</sup> April 2015 to the Defendant asking it to obtain from the Plaintiff a "Performers' Rights Clearance Certificate". The notice is exhibited as Ex.PW-1/15. The

Defendant, however, did not come forward to obtain such certificate. It is stated that the public performance of the Plaintiff's repertoire at the Defendant's Bar and Restaurant without permission of the Plaintiff and without payment of royalties is an infringement of the Plaintiff's Performer's Right and violation of the R3. It is stated that the Plaintiff and through the Plaintiff its members are suffering loss of their legitimate dues because of the Defendant's refusal to pay the licence fee to the Plaintiff.

15. Mr. Pravin Anand, learned counsel appearing for the Plaintiff, points out that the performers' rights subsist until 50 years from the beginning of the calendar year next following the year in which the performance is made. Explanation 3 of Rule 68 of the Copyright Rules, 2013 states that performance includes recording of visual or acoustic presentation of a performer in the sound and visual records in the studio or otherwise. He presented before the Court a graphic depiction of the rights in a performance, the owner of which is the performer and which could then be assigned to the Plaintiff. This is a distinct right which has received recognition in terms of the amendments to the Act in 2012. It is evident that the performer has the R3 every time his/her performance in a song is commercially used except when it is used along with the cinematograph film in a cinema hall. If the Performer consents to the incorporation of his/her performance in a film, he/she may by contract retain his/her performer rights even in a film. If a written consent is given by the performer in a written agreement to the producers of the film, the performer cannot object to the enjoyment by the producer of the Performer's right in the same film as long as he/she continues to receive royalty for the commercial use of his/her

performance.

16. The Court is satisfied that the Plaintiff has been able to prove the infringement by the Defendant of the R3 of the members of the Plaintiff Society in the performances as recorded in the CDs prepared by the Plaintiff's Investigator. The playing of songs by the Defendant in its restaurant without payment of royalty to the Plaintiff is a violation of the R3 of the performers who are members of the Plaintiff. The exploitation of the performances of the members of the Plaintiff by the Defendant by playing the said performances in its bar and restaurant without obtaining the Performer's Rights Clearance Certificate thus constitutes an infringement of the R3 of the members of the Plaintiff Society.

17. In that view of the matter, the suit is decreed and a decree of permanent injunction is issued restraining the Defendant, its officers, servants, agents and representatives and all others acting for and on its behalf from communicating to the public the Plaintiffs repertoire comprising of Performer's performances of all its members and that of the members of its sister societies which it is authorized to administer in India, without paying royalties to and obtaining a clearance from the Plaintiff Society or doing any other act infringing the Plaintiffs Performer's rights through any medium including but not limited to radio stations, TV and usage by mobile companies and violating the Right to Receive Royalties (the R3) and their Performer's Rights.

18. A decree is issued requiring the Defendant to render to the Plaintiff the accounts of all the monies earned by it from the performance of the

repertoire comprising the performances of the Performers who are members of the Plaintiff.

19. In the absence of any substantive evidence in that regard in the present proceedings, the prayer of the Plaintiff requiring the Defendant to pay damages is declined. However, the right of the Plaintiff to institute separate proceedings in future in that regard against the Defendant, after rendition of accounts by the Defendant in terms of para 18 above, in accordance with law is reserved.

20. The suit is decreed in the above terms with costs of Rs.20,000 which will be paid by the Defendant to the Plaintiff within four weeks. Decree sheet be drawn up accordingly. The application is disposed of.

**AUGUST 12, 2016**  
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**S. MURALIDHAR, J**