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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L)NO.3623 OF 2016

IN

SUIT (L)NO.1190 OF 2016

Phonographic Performance Limited

...Applicant

In the matter between

Phonographic Performance Limited

...Plaintiff

V/s.

Manuj Agarwal & Ors.

...Defendants

.....
Mr. Amogh Singh i/b. Vishal Gupta for the applicant in NMS and for the plaintiff in Suit.

Mr. Venkatesh Dhond, Senior Advocate, Chirag Mody, Jatin Pore, Parag Parag Kandhar, Ankita Agrawal and Sahil i/b. QSK Legal for defendant no.3.

Mr. Maloy Poddar, Vice President Finance, Authorised representative of defendant no.3 - present in Court.

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CORAM : A. K. MENON, J.

(VACATION COURT)

DATE : 27TH DECEMBER, 2016

P.C.:

1. This motion was mentioned in the morning. The papers are produced due to the extreme urgency as the defendant no.3 seeks to vacate an ad-interim order dated 23rd December, 2016 which was granted exparte in the above Suit. The order records that the Motion was moved exparte in view of extreme

urgency by the plaintiff and proceeds on the basis that in similar matters this Court has held that the defendants in those matters must obtain licences for holding events such as the one contemplated in the plaint. The immediate reason for moving this application is the fact that the festival known as Sunburn 2016 is to be staged near Pune from 28th December to 31st December, 2016.

2. The plaintiff has not disclosed in the plaint as to when it became aware of the proposed festival however, what is evident from the plaint is that the plaintiffs have averred that the defendant no.3 and 4 are habitual infringers and that they used copy righted material without making payment to the copyright holders. The affidavit in support of the motion makes no mention as to why the motion is being moved exparte.

3. In an order dated 21st December, 2016 passed in a group of 13 Suits., this Court had held that the defendants therein was liable to obtain necessary licenses prior to staging events for Christmas and New Year's Eve. However, in that case the order was passed after some of the defendants were represented. In this case however, the order was passed without notice on 23rd December, 2016. Paragraph 6 of the order reads as follows:-

"6. The applicant is directed to convey this order to the defendants immediately. The parties to this proceeding to act

on the authenticated copy of this order.”

(emphasis supplied).

3. The learned counsel for the plaintiff appears on notice today to oppose the application. He states that the order was served on the defendants only on 26th December, 2012 at 4.30 p.m. He states that the order was passed on 23rd December, 2016 in the evening and 24th December and 25th December, 2016 were holidays. There is no explanation as to why the order could not have been served through email or by other means. In fact it appears that the plaintiffs have made no efforts whatsoever to communicate the order to the defendant no.3 despite a specific direction to communicate the order to all the defendants.

4. In the circumstances, given the fact that the event starts tomorrow Mr. Dhond, the learned Senior Counsel for the defendant no.3 states that his client is willing to give an undertaking to this Court to secure the plaintiff's claim if any. Mr. Maloy Poddar, Vice President-Finance who is present in Court undertakes on behalf of the respondent no.3 to pay to the plaintiffs any amount that may be determined to be payable to the plaintiffs in respect of the events Sunburn 2016.

5. The undertaking is accepted. In the circumstances, the plaintiffs will be at liberty to quantify the amount claimed as payable before the hearing of the notice of motion so as to enable the Court to quantify the amount payable if

any by the defendant no.3 or such of them who are found liable. Furthermore, Mr. Dhond says once again on instructions of Mr. Poddar that the amounts so payable shall constitute a charge on all revenue's of the respondent no.3.

6. The defendant's event may therefore be staged subject to such undertaking. In my view the undertaking sufficiently safeguards the interest of the plaintiff despite the fact that the plaintiffs have failed to comply with the directions in paragraph 6 of the order in the right spirit. It is also made clear that in respect of any future events the plaintiffs are at liberty to call upon the defendants or such of them who are liable to pay the licence fees to the plaintiff to pay such amounts after quantifying them and by calling upon the defendants to execute the licence agreements which according to the plaintiffs are prerequisites to hold such events.

7. The motion is already returnable on 18th January, 2017, hence no further directions are required. The order dated 23rd December, 2016 shall therefore stand modified subject to the above undertaking.

(A. K. MENON, J.)