

O.A.No.1258 of 2017
in
C.S.No.975 of 2017

M.SUNDAR.J,

Sole plaintiff in the main suit is the lone applicant herein. Defendants 1 to 50 in the main suit are the respondents 1 to 50 in the instant application.

2.For the sake of convenience and clarity, parties in this application are referred to by their respective ranks in the main suit.

3.Mr.Kuberan, learned counsel representing M/s.Ganesh and Ganesh, Law Firm, is before this Court on behalf of the sole plaintiff.

4.Mr.Ahosk Menon, learned counsel undertakes to file vakalat for the 1st defendant and he accepts notice on behalf of the 1st defendant. Mr.Vijay Subramanian, learned counsel undertakes to file vakalat for the 5th defendant and he accepts notice for the 5th defendant. Mr.P.B.Balaji, learned counsel undertakes to file vakalat for the defendants 6 & 7 and he accepts notice for them. (To be noted, they have also accepted the notice on behalf of the respective defendants in the main suit).

5.The main suit has been laid by the plaintiff-company claiming that it

is dealing with administration of copyrights of its members and has been licensing sound recordings for 'non-physical' use i.e., for all forms of exploitation of copyright in sound recordings except the manufacture and sale of physical copies like vinyl discs, audio-cassettes, USBs, MP3 formats and currently, compact discs (CDs). Such non-physical exploitation of sound recordings, which the plaintiff licenses, includes public performance in hotels and restaurants and other venues/radio and television broadcasting, communication to the public through mobile telephony, through internet and the like. The plaintiff claims that it performs the above functions as owner of copyright in sound recordings in respect of non-physical usage of the same. For this purpose, it has obtained exclusive assignments of and/or exclusive control over copyright in the concerned sound recordings, limited to non-physical usage as described above, from its member record labels, who are the first copyright owner and publisher of their respective sound recordings. The plaintiff's repertoire consists of more than 7 lakh sound recordings which are film, non-film genre both in Hindi, regional languages and English. In order to enable users of sound recordings to determine whether any particular sound recording belongs to the plaintiff, the plaintiff has made available a list of its assignor music labels in its website, viz., "www.pplindia.org". Further, in compliance of Section 52A(1) of the Copyright Act, each physical copy of any sound recording available in the market contains complete details of the ownership of the copyright subsisting therein. Therefore, from the name of the music label, which is prominently

displayed on each CD or other physical format, users of sound recordings can easily identify whether the sound recording falls within the plaintiff's repertoire merely by checking the record label name against the list of available on the website. To be noted, these are averments on which the suit is predicated.

6. Subject matter of this suit is sound recordings, which are essentially film songs contained in many motion pictures. To be noted, there are several songs in some of the motion pictures. The details are annexed to this order as a schedule.

7. It is the case of the plaintiff that there is an imminent threat of their copyright in the aforesaid work being infringed by the defendants as part of their Christmas and New Year programmes when such songs/sound recordings are likely to be played for the benefit of their guests in events that may be/are scheduled to be organised by the defendants/Hotels on such occasions.

8. Learned counsel for the defendants 1, 5, 6 & 7 would submit that it is not in dispute that the defendants are likely to play many of the songs/sound recordings contained in the list (annexed to this order as Schedule) in the ensuing Christmas/New Year programmes in their premises for their guests who would be paying the defendants/hotels for participating

in such events. This would tantamount to ground performance in IPR parlance. (To be noted 'IPR' stands for 'Intellectual Property Rights').

9.This application has been predicated particularly and primarily on the ground that the plaintiff is the owner of copyright in sound recordings set out in the schedule annexed to this order.

10.The prayer as sought for, in my opinion is too sweeping to be granted 'exparte' in the factual matrix of this case. To be noted, all the defendants are not before this Court. I have considered the time honoured parameters for grant of an order of exparte order of injunction ie., *prima facie* case, balance of convenience and irreparable injury incapable of compensation. I also heard all the learned counsel on either side, who are present before me.

11.After some arguments, considering that we are on the last working day of the Court for this calender year and also considering that the events are scheduled as Christmas/New Year events, to balance the rights of the parties and also protect the interest of the parties at lis, I deem it appropriate to pass an order on terms which I shall set out infra.

12.Before I set out the order, I deem it appropriate to record that it is the submission of the learned counsel for the plaintiff that as per their rate-

card, licence fee that will be payable for songs/sound recordings in annexed schedule per premises for the aforesaid events will be in the region of Rs.1.5 lakhs, subject to negotiation between the parties. In other words, it is in the region of a lakh to one and half lakhs. It is not in dispute that the defendants either run hotels or are hotels.

13.The directions are as follows:

a)the defendants shall deposit a sum of Rs.1.25 lakhs per premises to the credit of this suit on or before 28.12.2017.

b)the defendants will be entitled to play songs/sound recordings which are subject matter of this lis, in the light of such deposit. To be noted, the list of songs/sound recordings are enlisted in the annexed schedule which shall form part of the order.

c)Registry shall deposit the aforesaid amount in some interest yielding scheme in a Nationalized Bank.

d)subject to the outcome of the main suit, the aforesaid deposit together with interest shall be either paid out to the parties at lis in a suitable manner.

e)If the defendants do not deposit the amount as per aforesaid direction on or before 28.12.2017, there shall be an order of injunction till the disposal of the suit, restraining the defendants from playing for public consumption or for consumption of their guest the songs/sound recordings set out in the schedule, which is annexed to this order.

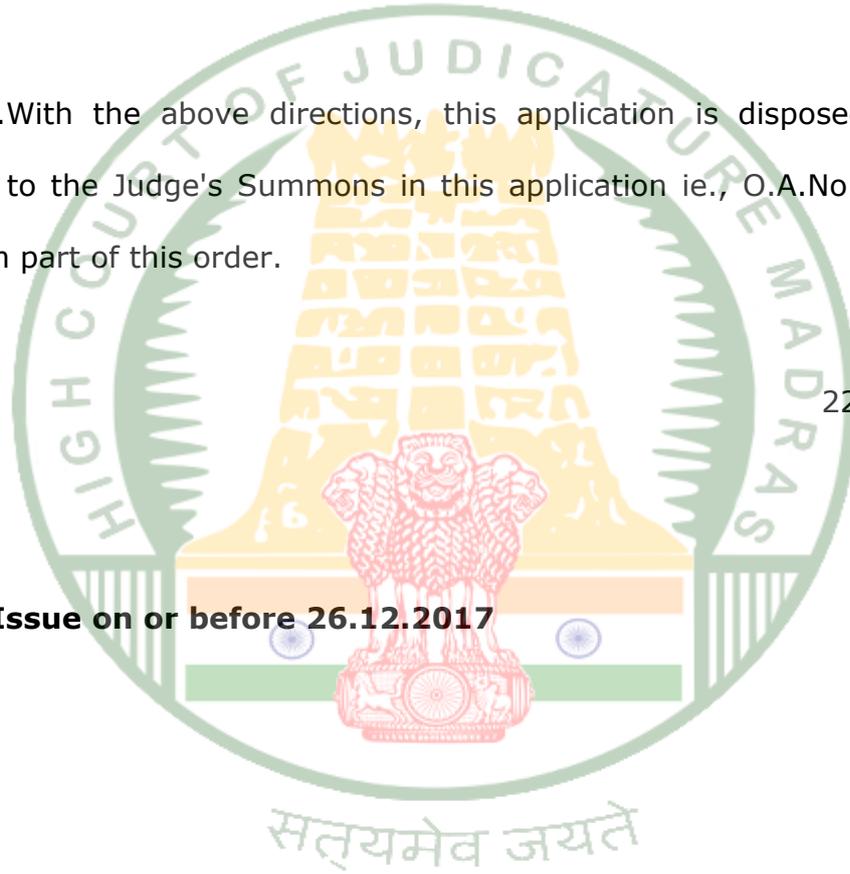
Learned counsel for the plaintiff shall comply with Order XXXIX Rule 3 of CPC, with regard to the defendants, who are not represented by counsel before me today. It is open to the plaintiff to communicate this order to the defendants (except the defendants 1, 5, 6 & 7), by way of electronic transmission/electronic communication.

14. With the above directions, this application is disposed of. The schedule to the Judge's Summons in this application ie., O.A.No.1285/2017 shall form part of this order.

22.12.2017

SSV

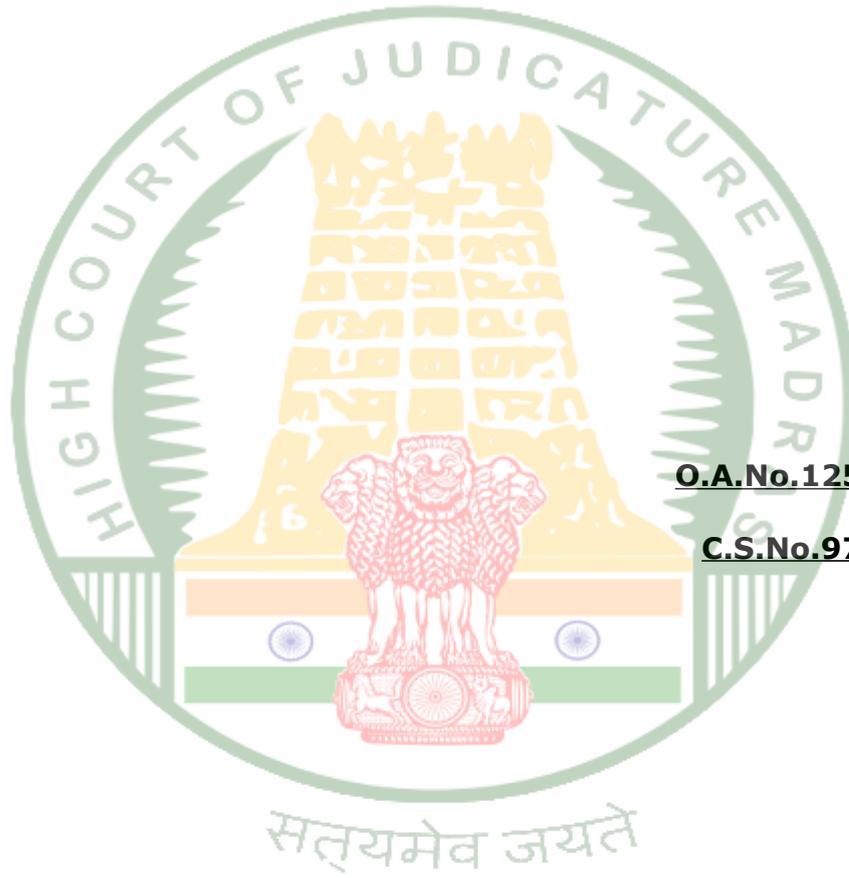
NOTE:- Issue on or before 26.12.2017



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M.SUNDAR.J,

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