

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

COMMERCIAL APPEAL (L) NO.100 OF 2017

IN

COM. NOTICE OF MOTION (L) NO.849 OF 2017

IN

COM. SUIT (L) NO.743 OF 2017

Phonographic Performance Ltd. Appellant

Vs.

Avion Hospitality Pvt. Ltd. & Ors. Respondents

WITH

COMMERCIAL APPEAL (L) NO.99 OF 2017

IN

COM. NOTICE OF MOTION (L) NO.848 OF 2017

IN

COM. SUIT (L) NO.744 OF 2017

Phonographic Performance Ltd. Appellant

Vs.

Deligent Hotel Corporation Pvt.
Ltd. & Ors. Respondents

WITH

COMMERCIAL APPEAL (L) NO.101 OF 2017

IN

COM. NOTICE OF MOTION (L) NO.845 OF 2017

IN

COM. SUIT (L) NO.740 OF 2017

Phonographic Performance Ltd. Appellant

Vs.

City Organisers Pvt. Ltd. & Ors. Respondents

WITH

COMMERCIAL APPEAL (L) NO.102 OF 2017

IN

COM. NOTICE OF MOTION (L) NO.847 OF 2017

IN

COM. SUIT (L) NO.742 OF 2017

Phonographic Performance Ltd. Appellant

Vs.

Nyati Hotels & Resorts Pvt. Ltd. & Ors. Respondents

WITH

COMMERCIAL APPEAL (L) NO.103 OF 2017

IN

COM. NOTICE OF MOTION (L) NO.846 OF 2017

IN

COM. SUIT (L) NO.741 OF 2017

Phonographic Performance Ltd. Appellant

Vs.

The Vision Group (The Crown) Bairo Alto
Dos Pilotos & Ors. Respondents

WITH

COMMERCIAL APPEAL (L) NO.104 OF 2017

IN

COM. NOTICE OF MOTION (L) NO.850 OF 2017

IN

COM. SUIT (L) NO.745 OF 2017

Phonographic Performance Ltd. Appellant

Vs.

Hotel Babylon International & Group
& Ors. Respondents

Mr. Ravi Kadam, Senior Counsel with Mr. Gauraj Shah,
Mr. Amogh Singh & Ms Shruti i/by Mr. D.P. Singh for
the Appellant.

Mr. Huzefa Nasikwala with Mr. Freddy Daruwala
i/by Nasikwala Law Office for Respondent No.3 in
Commercial Appeal (L) No.100/2017.

Mr. Saurabh Pakale i/by Mr. Shankar Katkar for
Respondent No.3 in Commercial Appeal (L)
No.102/2017.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 22, 2017

P.C:

Mentioned. Not on board.

2. Leave to amend to annexe copy of the impugned order with a legible copy and to do proper pagination of the complaints and the annexures thereto.

3. We have heard Mr. Kadam, learned Senior Counsel, appearing for the appellant/original plaintiff. Our attention has been invited to the averments in the complaints and the annexures thereto.

4. These appeals challenge a common order passed by

a learned single Judge in various Notices of Motion moved in Commercial Suit Nos.740 to 745 of 2017 by the appellant/plaintiff. An application for urgent ad-interim injunction was made by way of Notices of Motion in these Suits. On their lodging and presentation, these applications were heard. The learned single Judge was requested to pass an urgent ad-interim order, even *ex parte*, given the urgency which, according to the plaintiff is, that there are certain events which are held in the city on Christmas eve and on New Year. These events are held by several of the defendants and the defendants book either hotels or lawns or gardens or other public places for such events if the law permits them to hold the events in such places otherwise and play at such events the works in which the plaintiff claims ownership in the copyright. The plaintiff/company before us has since its inception been licensing sound-recordist for non-physical use which includes public performance in hotels and restaurants and other venues/radio and television broadcasting, communication to the public through internet and the like. The claim is that the

plaintiff/appellant's repertoire consists of approximately seven lakh songs in Hindi, regional languages and English. There is an assignment and based on which the appellant/plaintiff before us approached this Court and their apprehension was that such event holders, some of whom have appeared before the Court, namely, the learned single Judge and before us on private notice and others who are absent but served, would violate the copyright and particularly defeat the rights of the owner, as claimed by the appellant/plaintiff. It is the events which are held on the eve of Christmas and New Year which give rise to this apprehension, according to the plaintiff.

5. Upon such applications for seeking an ad-interim relief, the learned single Judge has passed an order on 21-12-2017 denying that relief by holding that the appellant/plaintiff has no locus and such a relief as is sought to be claimed can only be claimed by those entities/societies which are referable to Section 33 of the Copyright Act, 1957 ("the Act" for short).

6. Our attention has been invited by Mr. Kadam, learned Senior Counsel appearing for the appellant/original plaintiff, to various provisions of the Act. He would submit that the Act contains several definitions but the Act itself is essentially to amend and consolidate the law relating to copyright. Mr. Kadam would submit that the terms “author”, “broadcast”, “cinematograph film”, “communication to the public”, “copyright society”, “exclusive licence”, “infringing copy” have all been defined, so also the “literary work”, “musical work”, “performance”, “sound recording” and “work” so as to appreciate the scheme of the law. Mr. Kadam relies upon the provisions contained in Chapter-III titled as “Copyright”, commencing from Section 13 and invites our attention to Section 14 which defines “copyright”. He would then submit that by Section 17, appearing in Chapter-IV, it is subject to the provisions of the Act, that the author of a work shall be the first owner of the copyright therein, but by Section 18 the owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the

copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. It is submitted that the provisos to Section 18 together with Section 19 and Section 19-A would enable the plaintiff to contend that independent of Section 33, by virtue of Chapter-VI titled as Licences, the plaintiff claiming as owner of existing work or prospective work of copyright in any future work is empowered to grant any interest in the right by licence in writing by him or by his duly authorised agent. Mr. Kadam would submit that Section 33 ought to be construed in the light of all prior provisions and with reference to these Chapters and not in isolation. If construed and viewed in isolation, it is possible that the error which the learned Judge fell in can be committed, according to Mr. Kadam. He would submit that the words and expressions appearing in sub-section (1) of Section 33 deal with commencement or, carrying on of a business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the

registration granted under sub-section (3) of Section 33, and the second proviso would read accordingly but this does not take away the right as owner and which ownership rights are derived by virtue of arrangements with the authors themselves. In this view of the matter, by Section 34, the administration of rights of owner by copyright society are conditioned not only by the rules but by Clauses (a) and (b) of sub-section (1) to Section 34. Hence, it is fallacious, according to Mr. Kadam, to assume that the plaintiff has no locus to file the Suit or claim injunction.

7. Upon perusal of the order under challenge with the assistance of Mr. Kadam, we find that the learned single Judge has proceeded to deny the relief only on the construction and interpretation placed by him on Section 33. With great respect, the learned Judge's attention was not invited to several provisions of the Act to which we have adverted with the assistance of Mr. Kadam. His attention was also not invited to several ad-interim/interim orders passed in similar Suits by this Court earlier or the material and relevant averments of the plaint particularly para 3(m), (n) & (o). With these materials we

find, therefore, that arguable questions are raised.

8. We, therefore, propose to dispose of these appeals at the admission stage itself. However, on account of the apprehensions and which are appearing to be genuine and reasonably expressed by the plaintiff, an injunction ought to follow. We are of the opinion that a *prima facie* case is made out and equally the balance of convenience is in favour of the appellant/plaintiff. They would suffer irreparable loss and injury in the event not only their rights as owner but all those who have assigned the same in their favour would be jeopardised. Hence, there would be an ad-interim injunction in terms of prayer clause (c) excluding the bracketed portion. The prayer clause (c) reads thus:-

"(c) *That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to pass an order and injunction restraining the Defendant by itself, its servants and agents, from in any manner publicly performing or in any manner communicating the sound recordings works of the Plaintiff to the public, {or allowing their premises or any premises under their control to be used for the said purposes,} without license from the Plaintiff, or otherwise infringing copyright in any work owned by the Plaintiff.*"

This ad-interim injunction will continue pending further orders.

9. However, there are three appearing parties before us. Learned counsel appearing on behalf of Pallazio Hotels and Leisure Limited and which is respondent No.3/original defendant No.3 in Commercial Appeal {L} No.100 of 2017 says that without prejudice to the rights and contentions of the said defendant/respondent, it would not perform publicly or communicate the sound recording work of the plaintiff to the public without licence from the plaintiff and they are ready and willing to obtain such licence, of course, without prejudice to their legal rights and contentions on payment of the stipulated licence fees. They would deposit the fees as well with the appellant/plaintiff and which deposit shall be treated as without prejudice to their rights and contentions. We accept these statements made, on instructions, as undertakings to this Court. We order that nothing that the said defendant does in pursuance of these statements shall preclude them from raising appropriate contentions including raising the issue of maintainability of the Suits at the instance of the present plaintiff.

10. Stand over to **30-1-2018**. To be listed on the Supplementary Board.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)

