

C.S. No. 308 of 2013

Agi Music Sdn Bhd v. Ilaiyaraja
2019 SCC OnLine Mad 1960

In the High Court of Madras
(BEFORE ANITA SUMANTH, J.)

C.S. No. 308 of 2013

Agi Music Sdn Bhd, Represented by Agilan Lechaman Managing
Director Plaintiff;

v.

Ilaiyaraja and Another Defendants.

And

C.S. No. 625 of 2014

Ilaiyaraja Plaintiff;

v.

B. Narsimhasn and Others Defendants.

C.S. No. 308 of 2013 and C.S. No. 625 of 2014

Decided on June 4, 2019, [Reserved: 28.04.2019]

Advocates who appeared in this case :

For Plaintiff: Mr. Anirudh Krishnan Assisted by Mr. Keerthikiran Murali (Plaintiff in C.S. No. 308/2013 and 4th Defendant in C.S. No. 625/2014)

For Defendants: Mr. Perumpulavil Radhakrishnan Assisted by Mr. S.P. Vijayaraghavan for Mr. S.K. Rakhunathan and Mr. S. Kingsten Jerald (for 1st Defendant in C.S. No. 308/2013 and Plaintiff in C.S. No. 625/2014)

Mr. Satish Kumar Assisted by Ms. Gopika (for 2nd defendant in C.S. No. 625/2014)

PRAYER: Plaint under Order IV Rule 1 of the Original Side Rules 1956 read with Order VII Rule 1 of the Civil Procedure Code and Section 62 of the Copyright Act, 1957 praying as follows:

- (a) A permanent injunction restraining the 1st defendant from violating in any way the negative covenant (clause 2) or any other provision of the Agreement dated 24.11.2007, particularly by entering into or attempting to enter into or, after entering into, by performing or assisting in the performance of, any agreement with any person inconsistent with the terms of the Agreement dated 24.11.2007;
- (b) A permanent injunction restraining the 2nd defendant, its agents, officer, servants, and representatives, franchisees and all others in any capacity acting for or on its behalf from manufacturing, selling, distributing or in any other way infringing the Plaintiff Company's exclusive right under the Copyright Act to deal in any sound recording composed or made by the 1st Defendant;
- (c) A permanent injunction restraining the 2nd defendant from communicating with the Plaintiff Company's dealers, suppliers or customers in a manner adverse to the Plaintiff Company's reputation and, in particular, from purporting to question the Plaintiff Company's right to exploit the works composed by the 1st defendant or claim conflicting rights thereto, and to award the costs.

PRAYER: Plaint under Order IV Rule 1 of the Original Side Rules, 1956 read with Order VII Rule 1 of the Civil Procedure Code praying as follows:

A. Permanent injunction restraining the defendants from violating in any way

particularly by entering into or attempting to enter into or, after entering into by performing or assisting in the performance of, any agreement with any third party of the suit schedule mention films.

- B. Permanent injunction restraining the defendants its agents officers servants, representatives, franchise and all others in any way capacity acting for or on behalf of from manufacturing, selling, distributing or in any other way infringing the plaintiff's exclusive right under the Copy Right Act to deal in any sound recording composed or made by the defendants.
- C. Permanent injunction restraining the defendants from communication with the plaintiff dealers, suppliers, or customers in a manner adverse to the plaintiff company's reputation and, in particular from purporting to question the plaintiff's right to exploit the works composed or claim conflicting rights and cost of the suit.

The Judgment of the Court was delivered by

ANITA SUMANTH, J.:— This common judgment is passed in C.S. No. 625 of 2014 and C.S. No. 308 of 2013 since the issues as well as facts involved are intertwined. The plaintiff in C.S. No. 308 of 2013 ('1st suit') is Agi Music, Malayasia, arrayed as D4 in C.S. No. 625 of 2014 ('2nd suit'). Mr. Ilaiyaraja, arrayed as D1 in the 1st suit, is the plaintiff in 2nd suit. Modern Cinemas arrayed as D3 in the 1st suit is not a party in the 2nd suit. That apart, the 2nd suit filed by Mr. Ilaiyaraja arrays the Echo Recording Company Pvt. Ltd., M/s. Unisys Info Solution Pvt. Ltd., and Giri Trading Company as D2, D3 and D5 respectively.

2. The reliefs sought in both suits are set out hereunder:

C.S.308 of 2013:

- (a) A permanent injunction restraining the 1st defendant from violating in any way the negative covenant (clause 2) or any other provisions of the Agreement dated 24.11.2007, particularly by entering into or attempting to enter into or, after entering into, by performing or assisting in the performance of, any agreement with any person inconsistent with the terms of the Agreement dated 24.11.2007;
- (b) A permanent injunction restraining the second Defendant, its agents, officer, servants, and representatives, franchises and all others in any capacity acting for or on its behalf from manufacturing selling distributing or in any other way infringing the plaintiff company's exclusive right under the Copyright Act to deal in any sound recording composed or made by the 1st defendant;
- (c) A permanent injunction restraining the 2nd defendant from communicating with the plaintiff Company's dealers, suppliers or customers in a manner adverse to the plaintiff Company's reputation and, in particular, from purporting to question the plaintiff Company's right to exploit the works composed by the 1st defendant or claim conflicting rights thereto, and to award the cost.

C.S.625 of 2014:

- A. Permanent injunction restraining the defendants from violating in any way particularly by entering into or attempting to enter into or, after entering into by performing or assisting in the performance of, any agreement with any third party of the suit schedule mention films.
- B. Permanent injunction restraining the defendants its agents officers servants, representatives, franchise and all others in any way capacity acting for or on behalf of from manufacturing, selling, distributing or in any other way infringing the plaintiff's exclusive right under the Copy Right Act to deal in any sound recording composed or made by the defendants.

C. Permanent injunction restraining the defendants from communication with the plaintiff dealers, suppliers, or customers in a manner adverse to the plaintiff company's reputation and, in particular from purporting to question the plaintiff's right to exploit the works composed or claim conflicting rights and cost of the suit.

3. Heard the detailed submissions of Mr. P. Radhakrishnan, learned counsel for Mr. Ilaiyaraja/D1 in the 1st suit/plaintiff in the 2nd suit, Mr. Anirudh Krishnan, learned counsel for D1 & D4 in the 2nd suit/plaintiff in 1st suit and Mr. Sathish Kumar for D4 in the 2nd suit. There is no representation for the other parties despite service being complete on all. The 2nd suit has been dismissed for default as regard D1 on 29.09.2016.

4. I start the narration of facts with the submissions of Mr. Ilaiyaraja, despite the fact that he is the plaintiff only in the second suit. This is for the reason that the entire lis revolves around the ownership of the Intellectual property in the music compositions/musical works of Mr. Ilaiyaraja. The Annexure to the 2nd suit contains reference to 1074 compositions. The Schedule and Exhibit to the Sound Recording Licence Agreement dated 27.11.2007 relied upon by Agi Music Sdn Bhd refers to 678 films in which 3811 songs have been composed by Mr. Ilaiyaraja and the Annexure to the written statement filed by Echo, D2 in the 2nd suit, refers to Agreements with Producers in relation to 310 films in which Mr. Ilaiyaraja has composed music, of which 259 have been filed and marked as evidence by Echo. It thus seems appropriate to me that the narration of facts commences with his submissions.

5. The plaint pleadings (2nd suit) are not very detailed at all and are supplemented in great detail by the submissions of Mr. P. Radhakrishnan, learned counsel appearing on behalf of Mr. Ilaiyaraja, assisted by Mr. S.P. Vijayaraghavan and for Mr. S.K. Rakhunathan and Mr. S. Kingsten Jerald. The stand of Mr. Ilaiyaraja, in both suits is as follows:

- (i) Mr. Ilaiyaraja is a renowned music composer, acknowledged to be one of the finest in the world. As on date of institution of the second suit, his compositions number in excess of 4,500 songs for more than 1000 films. The genres that he has composed in include films, popular music, western music, orchestral, folk, religious and world music, choral music and oratorios. His music has been an intrinsic part of several films in many languages. He contends that he is the sole and absolute owner of the rights subsisting in the 'musical work' and 'sound recordings' contained in the films as well as stand-alone independent compositions, in terms of the Copyright Act, 1957 (hereinafter referred to as 'Act').
- (ii) The plaint sets out his achievements in the music world in extenso, pointing out that he is celebrated throughout the world for the creativity and depth in his compositions. He has been awarded the Padma Bhushan by the Government of India. He asserts his right in law to the music composed by him as well the right to assign the right of reproduction, exploitation and use thereof to anyone, at his discretion.
- (iii) As far as Echo Recording Company Pvt. Ltd. (hereinafter referred to as 'Echo') is concerned, the plaint is absolutely bereft of details. There are no pleadings that are specific to, or descriptive of the specific cause of action pleaded as against Echo, except in the concluding portion of paragraph 3 where he states in general terms as follows: *'According to the act the plaintiff is the sole and absolute owner of the right in respect of the musical works sound recording contained in the films and as well as the independent artistic composer. In fact the plaintiff has absolute right for production reproduction, use and sale to anybody on whatsoever manner work performed by the plaintiff on the artistic and musical*

manner. The plaintiff has every right assign the same to anybody on his choice for the consideration or by assignment. The precondition for the same is that the royalty of the same assignment should be paid the author viz., plaintiff. As per the act the plaintiff is the exclusive copyright holder of the musical works performed in the films including the right to make and release the copies of the said works by eluting the works any manner.'

- (iv) Paragraph 7 of the plaint, detailing the cause of action, states that the plaintiff has been carrying on business of composing music in Chennai from 1974 till date of suit. There is also reference to the defendants having approached Mr. Ilaiyaraja seeking exploitation of his 'musical works' and 'sound recordings' and him having granted them permission upon condition that royalty be paid to him. A generic statement that no royalty has been paid is made but no details of defaults are provided.
- (v) Though he states that he holds complete and absolute right over his musical works, on account of the paucity of time to devote to more mundane or material pursuits such as distribution, exhibition or exploitation thereof, Mr. Ilaiyaraja, on 27.11.2007, executed an Assignment Agreement assigning to his wife, Mrs. Jeevaraja, all and complete rights in his musical works/compositions detailed in Exhibit A thereof.
- (vi) Mrs. Jeevaraja, in turn, licensed the rights of exploitation of the same to Agi Music Sdn Bhd, at the behest of the latter (Agi Music Sdn Bhd/D1 & D4 in the 2nd suit/plaintiff in 1st suit and is hereinafter referred to as 'Agi Music'), vide a Sound Recording Licensing Agreement (referred to hereinafter as 'SRLA'), upon condition that royalties be paid to Mr. Ilaiyaraja.
- (vii) A Sub-Publishing Agreement (hereinafter referred to as 'SPA') dated 24.11.2007 was also entered into by and between Raja Music Universals, by Mrs. Jeevaraja, as its owner and Agi Music, as sub-publisher, to the effect that the latter was granted world rights to print, publish and vend the compositions listed in the Schedule/Exhibit A thereto for a period of 10 (ten) years upon payment of royalty.
- (viii) An Addendum dated 06.01.2010 had been executed, according to Agi Music, to both the SRLA and SPA making some additions to the main agreements. The Addendum has been denied outright by Mr. Ilaiyaraja who contends that the document was illegal and the signatures therein said to be those of his wife as well as the initials therein said to be his, constituted a rank forgery.
- (ix) I must digress at this juncture to state that the factum of assignment of copyright to Mrs. Jeevaraja or the subsequent licensing of the rights by her to Agi Music does not figure in the suit pleadings. This has led to a serious objection by Agi Music that Mr. Ilaiyaraja is patently guilty of suppression of facts particularly seeing as the 1st suit has been filed by Agi Music making claims based upon the aforesaid agreements even as early as in 2013 in which summons had been served upon Mr. Ilaiyaraja by the time the 2nd suit came to be filed. I will deal with this objection in due course.
- (x) To continue with the narration, though the SRLA and SPA stipulate a period of ten years for their validity, no period is stipulated in respect of the Assignment to Mrs. Jeevaraja. The argument of Mr. Ilaiyaraja is that the provisions of Section 19 (5) of the Act provides for a period of five (5) years, by default, if the agreement for assignment of copyright was silent as to the period of such assignment. Thus, according to Mr. Ilaiyaraja, by statutory mandate, the assignment of the rights to his wife was for a period of five years only. Consequently, both the SRLA and SPA dated 24.11.2007 cease to have any effect from 27th November 2012. In any event, Mrs. Jeevaraja had passed away on 31.10.2011 and thus the assignment

dated 24.11.2007 could not have survived thereafter post her demise. For these reasons, Mr. Ilaiyaraja contends that the assignment of his copyright and sound recording rights as well as the subsequent licenses/rights came to an end on 31.10.2011 itself and at any rate on 26.11.2012.

(xi) However, according to Mr. Ilaiyaraja, Agi Music has continued to exploit his work unfairly and even after the lapsing of the agreements, infringing his copyright as well as sound recording rights compulsively. On the basis of the above pleadings, the plaintiff prays for the grant of permanent injunctions restraining the defendants by way of the present suit prayers.

(xii) The pre-suit legal notice has been issued only to Mr. Narasimhan of Agi Music, the first defendant and Agi Music, on 05.06.2014 and no legal notice is stated to have been issued to Echo. Be that as it may, the reliefs of permanent injunctions from exploitation of the musical works in any manner including analog, digital internet telephony or any other manner and of mixing or exploitation thereof, are sought as against all defendants, including Echo.

6. Original Application Nos: 760 to 762 of 2014 had been filed by Mr. Ilaiyaraja praying for the grant of *ad interim* injunctions restraining the defendants from exploiting in any way the exclusive copyright claimed to be held by Mr. Ilaiyaraja in regard to the musical works and sound recordings in question and connected reliefs. Application No. 7701 of 2014 was filed by Mr. Ilaiyaraja in terms of Order 14 Rule 8 read with Order 2 Rule 2 of the Civil Procedure Code, 1908 (in short 'CPC') praying for leave to file a separate suit for reserved reliefs.

7. Not to be outdone, Agi Music as well as the remaining defendants in the 2nd suit filed applications seeking the rejection of plaint in terms of Order 7 Rule 11 of the CPC.

8. A learned Single Judge of this Court granted an *ex parte* injunction by order dated 25.09.2014 restraining the respondents from exploiting the music composed by Mr. Ilaiyaraja in any way till 16.10.14. The injunction was made absolute and the applications of the plaintiff allowed on 03.03.2015. Application No. 7701 of 2014 sought leave of the Court to sue the defendants for other remedies, such as damages for infringement of copyright, accounting for profits and other monetary reliefs and was also allowed. The application seeking rejection of plaint stood dismissed by virtue of the same order, as aforesaid.

9. Order dated 03.03.2015 was carried in Original Side Appeal by all parties. The First Bench of this Court disposed the appeal, setting timelines for the completion of pleadings as well as recording of evidence and thereafter for the hearing and disposal of the suits finally. The Order of the learned Single Judge was thus not disturbed in any way. At this juncture, an attempt was also made at settlement of the dispute, that was, unfortunately, unsuccessful.

10. A Petition came to be subsequently filed by Mr. Ilaiyaraja alleging contempt by the respondents in the applications. He alleged that the respondents were continuing to deal in, sell and exploit the music compositions that they had been restrained from selling. Notice was issued and has been served upon Echo alone. The matter awaits completion of service upon the other respondents.

11. The submissions of Agi Music, the plaintiff in the 1st suit, represented by Mr. Anirudh Krishnan Assisted by Mr. Keerthikiran Murali, are as follows:

(i) Agi Music is a record label and music publishing company having a presence both in Malaysia and in India. It has a wide portfolio of sound tracks of several reputed music composers. It had entered into an SRLA and SPA on 24.11.2007 with Mrs. Jeevaraja, the wife of Mr. Ilaiyaraja and the owner of the copyright in his musical compositions, receiving exclusive rights worldwide to exploit such copyright. The Agreements contained a Schedule and Exhibit thereto detailing the 678 films and 3811 songs, comprising 'music products' for the purpose of

the agreement. The exclusive entitlement to manufacture, sell and distribute the 'music products' in several forms, worldwide, was conditional upon Mr. Ilaiyaraja receiving 50% per cent of the proceeds from such exploitation.

- (ii) An addendum was executed on 06.01.2010 reiterating the 2007 agreements and extending the same to cover the digital version of the songs. AGI music has been dutiful in the remittance of the royalty as agreed. However and unfortunately, Mr. Ilaiyaraja did not display the same adherence to the terms of the agreements. There were several occasions between 2010 and 2013 when Mr. Ilaiyaraja sought to breach the clauses of the agreement, specifically the negative covenant that sought to restrain him from granting or attempting to grant any rights to third parties that would be inconsistent with the exclusive rights granted to Agi Music.
- (iii) Though the initial attempts to breach the aforesaid negative covenant did not fructify, on 19.04.2013, Agi Music received information that Mr. Ilaiyaraja was contemplating an agreement with the second defendant, Modern Cinemas, for exploitation of the same repertoire as covered in the Agreements, in breach of the negative covenant imposed upon the owner of the right as per Clause 2 of the SRLA. This was a clear violation of the exclusive right granted to Agi Music, in force for a period of ten years. Though several attempts were made to resolve the dispute with Mr. Ilaiyaraja, he was not amenable to the requests of Agi Music
- (iv) Agi Music has also been litigating on behalf of Mr. Ilaiyaraja and was incurring substantial expenditure on his behalf to protect his copyright and its rights under the agreement when other persons/entities have attempted to interfere with the same. In C.S. No. 187 of 2010 filed by *People Info Comm. Pvt. Ltd. v. Agi Music Sdn Bhd*, Unisys Infosolutions Pvt. Ltd. and Echo Recording Company Pvt. Ltd. questioning the copyright of Mr. Ilaiyaraja in the 'sound recordings', it was Agi Music that has succeeded in establishing that Mr. Ilaiyaraja was indeed the copyright owner of the 'sound recording' in fifty out of a hundred and eighty five films in dispute. This had been possible since there had been agreements between the producers of those films and Mr. Ilaiyaraja to the effect that the rights in the sound recordings would be retained by the latter. This fact had been taken note of by this Court in that case and an amicable solution arrived at as between the parties.
- (v) Reference is placed on Section 14(e) of the Act, which provides that the holding of copyrights in 'sound recording' gives the beneficiary the exclusive right to make any 'sound recording' embodying it and also to sell or give on commercial rental a copy of such 'sound recording'. In the light of the entitlement of Mr. Ilaiyaraja to such 'sound recording', the exclusive right given to Agi Music is lawful and cannot be violated. Hence the present suit seeking permanent injunction, as per suit prayers.

12. In the course of the proceedings, the parties have confirmed that there is no attempt by Modern Cinemas, D2 in the 1st suit, to enter into any agreement for exploitation of the music compositions of Mr. Ilaiyaraja as apprehended by Agi Music.

13. Written statements have been filed by Mr. Ilaiyaraja in C.S. No. 308 of 2013 and Echo and Agi Music in C.S. No. 625 of 2014. Apart from the pleadings, all contesting parties have made/filed detailed oral/written arguments in common to both suits. The written submissions are substantially more elaborate than the pleadings and at times, also bring into play other factors and arguments, not specifically pleaded. Taking into account all the material available in the form of pleadings, oral and written submissions, depositions of the witnesses, evidences filed and case-law relied upon at the Bar, I now summarize the position of the parties as below:

A. *Mr. Ilaiyaraja vis-à-vis Echo and vice versa*

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- (i) The credentials of Mr. Ilaiyaraja as a composer, conductor, singer, songwriter and instrumentalist are highlighted, reiterating his stand that he is the absolute owner of the copyright in his music compositions/sound recordings.
- (ii) Echo was started, according to Mr. Ilaiyaraja, only by him and owes its fame solely to the successful music created/composed by him for the film 'Moondram Pirai'. This was done solely to encourage and help Mr. Subramanyam, who started Echo.
- (iii) Echo has no permission from Mr. Ilaiyaraja to exploit his works and no document has been produced in this regard.
- (iv) Detailed reference is made by Mr. Ilaiyaraja to the provisions of the Act to establish that he is the legal owner of the copyright in the music composed by him, used as 'sound recordings' in several cinematographic films, specifically various clauses of section 2 as well as Sections 13, 14, 17, 18, 19, 51 and 55.
- (v) The provisions of the Copyright Act make it clear that Mr. Ilaiyaraja, as the 'author', is the sole, exclusive and absolute owner of all rights contained in his 'musical works' and 'sound recordings'. According to him, such rights extend to the right to produce, reproduce, use and sell such works to any person or entity of his choice, upon such terms as he may think fit.
- (vi) Echo was started as a sole proprietorship in 1981 by one, Mr. Subramanyam. It was converted into a private limited company in the year 1988. It is a recording company in the business of purchasing 'sound recordings' from producers of cinematograph films and using the same to manufacture cassettes and compact discs for sale.
- (vii) Echo states that it has obtained licenses/assignments for the 'sound recordings' based on the 'musical works' of Mr. Ilaiyaraja from various producers of the films, who, according to it are the owners of the such recordings.
- (viii) According to Echo, the suit is entirely misconceived as Mr. Ilaiyaraja is incorrect in the appreciation of the factual and legal position in issue, to the extent to which he believes that it is the composer of the music who holds the copyright in this regard.
- (ix) The suit is also contested on the ground of lack of maintainability stating that it is bad for the misjoinder of parties.
- (x) The Act provides that a 'sound recording' right vests only in the producer, who is both its 'Author' as well as 'First Owner'. Mr. Ilaiyaraja has been engaged by various producers to compose music for the films they produce. He thus, according to Echo, enjoys only the status of an employee, employed to compose music for their films and holds no other right barring the aforesaid. Once the musical work has been commissioned for the purpose of a specific film, the composer receives adequate remuneration in this regard from the producer. Thereafter, no rights can be said to enure to the music composer. The evidence recorded clearly establishes that Mr. Ilaiyaraja has received remuneration for all the assignments including royalty therefrom, as extracted below:

Cross Examination by Echo, D2, on 25.02.2016:

..... I admit that I received the remuneration of my work whenever I composed music for films. Usually the producer will disperse my remuneration.'

The aforesaid is, according to Echo, the correct legal position and there is thus no statutory support for the argument of, and entitlement claimed by Mr. Ilaiyaraja.

- (xi) Though no agreements have been produced as between Mr. Ilaiyaraja and Echo, Echo has made continuous remittances of royalty till 1990 and stopped thereafter. This confirms the factum of acceptance and acquiescence of Echo that Mr. Ilaiyaraja holds rights in the 'sound recordings'. Evidence in this regard has

- been let in, in the form of invoices/vouchers for payment of royalty to Mr. Ilaiyaraja (Exs.A.12 to A.40, A.42 to A.71, A.73 to 78, and A.81 to A.87).
- (xii) As far as the payment of royalty to Mr. Ilaiyaraja is concerned, Echo admits the same. However, such royalty has been paid on the basis of the arrangement with the producers and not on the basis of the alleged ownership of the work of Mr. Ilaiyaraja.
- (xiii) Echo confirms that it holds valid Assignment Agreements with different producers, 310 in number, out of which 259, ranging between the years 1981 to 1991, have been marked and filed as documents. It was unable to locate 41 agreements on account of the distance of time involved. By virtue of the Agreements, Echo has been given the right from the producers to exploit the 'sound recordings' based on the 'musical works' composed by Mr. Ilaiyaraja.
- (xiv) Mr. Ilaiyaraja strongly disagrees with the interpretation canvassed by Echo. His legal argument is that he has the unbridled right to exploit his 'musical works' in his admitted capacity as the 'author' of such work. For this proposition, he relies on the definitions of 'author', 'cinematograph film', 'infringing copy', 'producer', 'sound recording', 'work', 'composer', 'musical work' and 'adaption' in sections 2(d), 2(f), 3(m), 2(uu), 2(xx), 2(y), 2(ffa), 2(p) and 2(a) of the Act.
- (xv) Thereafter, detailed reference is made to Sections 13, 14 and 17 to establish that he is the 'first owner' of the Copyright in the musical work, and thus is vested with the right of reproduction or any other form of exploitation of such work to the exclusion of any other person/entity.
- (xvi) As regards the stand of Echo as well as the 259 Agreements relied upon by it are concerned, the following specific arguments are advanced by Mr. Ilaiyaraja:
- (a) The Copyright Amendment Act, 1994 substitutes the word 'record' wherever it occurred in the main Act with the phrase 'sound recording'. The use of the phrase 'sound recording' is only prospective as seen in the notes of clauses when the Act was amended. Thus, the agreements relied upon by Echo would have to be read only as they are without interpolating the words 'sound recording' therein. It is not the case of Echo that the words 'sound recording' have been substituted by way of an addendum to the original agreements and thus the agreements do not protect, in any way, the claims of Echo.
 - (b) This argument of non-marketability of 'sound recordings' on the ground that the agreements do not provide for the same, is countered vehemently by ECHO pointing out that rights over 'sound recordings' and 'musical works' have been provided for ever since the inception of the Copyright Act in 1957. The Act, as it stood promulgated in 1957, provided for the same rights as the present Act does. In other words 'sound recordings' have always been intrinsic part of the Copyright Act and the only change over time was the medium upon which the sound is recorded.
 - (c) The version of the Copyright Act, 1957 as originally passed and the amended Act notified on 09.05.1995 are compared to show that no new rights have been created by the 1995 amendment in respect of 'sound recording' and such rights are an intrinsic part and parcel of the original Act.
 - (d) The effect of the argument advanced by Mr. Ilaiyaraja would be to question whether at all such a right, viz., 'sound recording' exists and who owns the Copyright in that regard. This is inconceivable and a distortion of the law, according to Echo. Echo states that the media upon which music is recorded over time has changed in terms of advancement in technology and refinements thereof. Music was originally recorded upon a 'disc' or 'record' and connotes the medium itself upon which the recordings of sounds as well as medium was understood in the 1950s when the statute was enacted.

- However, the word 'record' connotes only the factum of recording thereupon and reference to 'sound recording' should be read to be synonymous with the word 'record'.
- (e) With the passage of time, the media upon which sounds were recorded increased manifold and as on date sound is recorded upon an extensive range and variety of media. In fact, today, one does not even require physical recording of sounds that can simply be downloaded from intangible spaces such as the Internet or the Cloud. It is for this reason that legislature has connoted the phrase 'sound recording' to merely indicate the act of preservation of the sound, whatever be and without restriction, of the medium.
- (f) In summary, Echo canvases the position that 'sound recordings', though recorded in different media, were always a subject matter of the Copyright Act, such right vesting only with the producers and Mr. Ilaiyaraja or any other composer for that matter did not retain any right over the same.
- (g) Mr. Ilaiyaraja then argues that the agreements relied upon by Echo are envisaged to survive, if at all, only during the existence of the Copyright Act, 1957 or modifications thereto *'for the time being in force'*, that is, during the tenure of the agreements itself being between 1981 and 1991. No subsequent amendments to the statute would impact the same. The agreements have thus worked themselves out and do not, in any way, impinge upon the rights of Mr. Ilaiyaraja.
- (h) In the absence of evidence produced by Echo to establish that Mr. Ilaiyaraja has transferred the rights in his music compositions to the producers, he would urge that the Court eschew the argument of Echo to the effect that the producer retains the rights in the music and sound recording in the films, to his exclusion.
- (i) If really the rights had thus been transferred, there would have been no necessity to include Clause 6(b) in the agreements entered into by Echo with the producers whereby the producers undertake to indemnify Echo against any claims or damages arising out of the rights assigned/transferred.
- (j) According to Echo, Mr. Ilaiyaraja being a composer of the stature that he is, is fully aware of the fact that no rights vests in him, as far as the 'sound recording' of his composition are concerned.
- (k) According to Mr. Ilaiyaraja, it was he who had facilitated the business of ECHO by requesting the producers to enter into sound distribution agreements with it sans any consideration, on his personal request solely as a measure to support to it. This, according to ECHO, reveals clearly that Mr. Ilaiyaraja was quite aware of the legal position that no rights in regard to the 'sound recordings' vest in him, since had it been otherwise, he would have transferred such rights to sound recording companies, such as ECHO himself, and there would have been no necessity to request the producers to do so.
- (l) In response, Mr. Ilaiyaraja produces a communication issued by the Tamil Films Producers' Council bearing Ref. No. 2011/2013-2014 dated 27.02.2014 (Ex.A1), extracted below, confirming that he is the author of the creations mentioned in the list.

"To whomsoever it may concern

This is to certify that the list of names of films enclosed herewith have Music Directed, Composed including Songs, Tunes, BGM's, Overall themes Music, Orchestra, Creativeness, Recording & Re-Recording by the Legend of the Indian Cinema "Maestro-Isaignani Ilaaraja", S/o. Ramasamy (late) residing at No. 38, Murugesan St., T. Nagar, Chennai 600017.

All the films mentioned in the list are belongs to "Maestro-Isaignani Ilaiyaraja" who is also the author of above said creations."

Sd/-

A. Kothandaramaiah (K.R.)

President

- (m) According to Echo, the above letter from the Producers' Council does not impact the legal position that Mr. Ilaiyaraja does not own any of the rights in the 'sound recording'.
- (xvii) Mr. Ilaiyaraja then argues that Section 13(4) of the Act specifically provides for a separate Copyright in respect of any work or part of the work that has been utilized as part of a cinematograph film. Thus, the copyright held by a creator of a part of a film, would not be affected by the ownership of the Copyright in the entirety of the film, even if the latter was held by the producer.
- (xviii) He relies on the provisions of Section 17 read with Section 2(d)(ii) of the Act that protects the right of the 'first owner' of the Copyright, which, according to him, is himself. The producer could thus not have transferred non-existing rights to Echo and the agreements are vitiated on these grounds.
- (xix) According to Mr. Ilaiyaraja, though the producer of a cinematograph film holds the right in respect of the film itself, it does not obliterate in any manner, the separate copyright that exists in various components of the film itself including the musical and literary works.
- (xx) He relies on a decision of the Kerala High Court in the case of *Madhu v. Ramesan* (CDJ 1987 Ker HC 557) for the proposition that it is the film producer upon whom rests the burden to establish that he had commissioned the author to compose the work in question for valuable consideration, which has not been done in the present case by the defendants. Reliance is placed on a decision of this Court in *Lalgudi Jayaraman v. Cleveland Cultural Alliance* (2008 5 MLJ 458) to establish that where a right over an artistic/musical/literary work is claimed by an entity, apart from the author, such entity is under a very heavy burden to show that the work was commissioned by him, was created in the course of employment by the author and that there was no agreement to the contrary. In the present case, this burden has not been discharged by Echo and its case would thus, have to fall.
- (xxi) A comparison is made between the statutory provisions, as they stood prior to amendment by the 2012 Act and subsequent thereto, to bring home the point that the rights vesting in a music composer have expanded considerably after the amendment and as such it was the music composer in whom the copyright in such work vests and who holds the exclusive rights for the exploitation thereof, as in the present case.
- (xxii) It is contended that the making and exploitation of the sound recording *de hors* the visuals that accompany the 'sound recording' in the cinematograph films constitute a clear and categoric infringement of the authors' protected right. As far as the producer is concerned and any other person/entity that derives power from the producer, the right extends only to the reproduction of the sound recording as part of the film itself. To clarify, only the broadcast/telecast/exhibition of the sound recording along with the visual effects that accompany it in the original cinematograph film is a permissible exploitation and any exploitation *de hors* the visual effects and outside the setting of the cinematograph films, constitutes rank infringement.
- (xxiii) According to him, the beneficial interest claimed through the agreements would tantamount to an actionable claim governed by Section 3 of the Transfer

of Property Tax, 1882 and the transfer of such actionable claims could only be by execution of a non-testamentary instrument in writing as per Section 130(1) thereof.

- (xxiv) Reference is also made to the provisions of the Indian Evidence Act, 1972 to urge that though Echo asserts that it has the right to exploit the 'sound recordings', such right being derived from the permissions granted to the producer by the author, Mr. Ilaiyaraja, no proof of such permission/waver of right has been produced before this Court. Thus, adverse inference has to be drawn as the defendants have not established their rights at all. The producers have also not been impleaded as parties to the suits to establish the veracity of the submissions/claims of Echo.
- (xxv) Finally Mr. Ilaiyaraja places great reliance upon an order of the Income tax Appellate Tribunal, confirmed by a Division Bench of this Court in *M. Subramaniam v. Deputy Commissioner of Income Tax* (272 ITR 525) to the effect that Echo is only a licensee and not an owner of the intellectual property in the 'sound recording' based on the music compositions of Mr. Ilaiyaraja. This position was canvassed successfully by Echo before the Income tax authorities in the context of proceedings under the Income tax Act, 1961 and Echo is thus estopped from taking a contrary and contradictory view now, in civil proceedings.
- (xxvi) Mr. Ilaiyaraja relies on the following judgments to buttress his submissions:
- (i) *Dr. H.S. Rikhy v. The New Delhi Municipal Committee* (AIR 1962 SC 554)
 - (ii) *Provash Chandra Dalui v. Biswanath Banerjee* (1989 Supp (1) SCC 487)
 - (iii) *Modi Co. v. Union of India* (1969 AIR (SC) 9)
 - (iv) *Samant N. Balakrishna v. George Fernandez* (AIR 1969 SC 1201(1))
 - (v) *Eastern Book Company v. D.B. Modak* ((2008) 1 SCC 1 : 2008 AIR (SC) 809)
 - (vi) *The Commissioner of Income Tax v. M. Subramaniam* (272 ITR 525)
 - (vii) *Ramswaroop Bagari v. State of Rajasthan* (AIR 2002 Rajasthan 27)
 - (viii) *Sardar Bir Singh v. Noor Ahmed* (AIR 1972 Gauhati 122)
 - (ix) *Holy Faith International Pvt. Ltd. v. Dr. Shiv K. Kumar* (2006 AIR (AP) 198)
 - (x) *Oriental Insurance Company Ltd. Haldwani v. Dhanram Singh* (AIR 1990 Allahabad 104)
 - (xi) *Madhu v. Ramesan* (CDJ 1987 Ker HC 557)
 - (xii) *Indian Performing Right Society Ltd. v. Music Broadcast India Ltd.* (Appeal No. 615 of 2011 in Suit No. 2401 of 2006 dated 29.09.2011)
- (xxvii) ECHO places substantial reliance on the judgment of the Supreme Court in the case of *Indian Performing Rights Society Ltd. v. Eastern Indian Motion Pictures Association* (hereinafter referred to as the 'IPRS') ((1977) 2 SCC 820 : AIR 1977 SC 1443) as well as the following cases:
- (i) *Music Broadcast Private Limited v. IPRS* (2011 (47) PTC 592)
 - (ii) *IPRS v. Aditya Pandey* (2012 (50) PTC 460)
 - (iii) *Radio Today Broadcasting Ltd. v. IPRS* (2009 (39) PTC 43)
 - (iv) *Lahiri Recording Co. Ltd. v. Music Master Video Mfg. Co. Ltd.* (2008 (37) PTC 121)
 - (v) *Gramophone Company of India Limited v. Shanti Films Corporation* (AIR 1987 Cal 63)
 - (vi) *Mathrubhumi & Malayala Manorama v. IPRS* (unreported Kerala High Court judgment in FAO Nos. 82, 83 of 2009 & 38 of 2010 dated 08.02.2011)
 - (vii) *M. Padmini v. Raj Television Network* (unreported Madras High Court in O.A. No. 763 of 2013 in C.S. No. 686 of 2013 dated 13.4.2015)
 - (viii) *Union of India v. Vasavi Co-op. Housing Society* ((2014) 2 SCC 269 :

AIR 2014 SC 937)

(xxviii) On the basis of the aforesaid arguments, it is argued by Mr. Ilayaraja that the exploitation of the 'musical works' authored by him in the form of 'sound recordings', by Echo, particularly in the absence of any proof produced to show that the rights in such works have been transferred by him to the producers of cinematograph films, amounts to infringement in terms of Section 51 of the Act.

B. Mr. Ilayaraja vis-a-vis Agi Music and vice versa

- (i) According to Agi Music, the proposal to conditionally exploit Mr. Ilayaraja's music commenced in 2004 and on 24.11.2007 a SRLA was entered into between Mrs. Jeevaraja and Agi Music for a period of ten (10) years. The agreement was accompanied by a compact disk (CD), a schedule and Exhibit, and which contained a list of films and songs numbering 678 and 3811 respectively, to which the agreement related.
- (ii) On the same day, a SPA was entered into between the parties enabling Agi Music to exploit the music works for a period of ten (10) years. Both these agreements had been drafted by Agi Music as admitted in evidence.
- (iii) An addendum was entered into on 06.01.2010 reiterating the earlier agreements and extending the scope of the same to the subject 'music products' in digitized form also.
- (iv) Though the SRLA provided for exclusive world right for exploitation of the sound recordings of Mr. Ilayaraja, and contained a negative covenant as per which Mrs. Jeevaraja would not grant rights to any other person or entity rights inconsistent with the right granted to Agi Music, Mr. Ilayaraja had proceeded to violate the same to the detriment of Agi Music.
- (v) Thus, Agi Music seeks permanent injunctions as prayed for as well as restitution for losses sustained by it.
- (vi) According to Mr. Ilayaraja, the SRLA as well as the SRA have lapsed since they were based upon an Assignment of his copyright to his wife, Mrs. jeevaraja, for a period five years. Any licenses granted in excess of the period of assignments were invalid. Admittedly, the deed of assignment does not contain a term. In such circumstances, the provisions of Section 19(5) of the Act mandate that the period would be five (5) years. Thus, according to him, the assignment agreement dated 24.11.2007 would survive only for a period of five (5) years and has expired as on 23.11.2012.
- (vii) Moreover his wife, Mrs. Jeevaraja, had expired on 31.10.2011 and with her the assignment of the copyrights as well. Thus there was no force in the contentions of Agi Music as no claims could be entertained on the basis of lapsed documents. Even according to Agi Music Mr. Ilayaraja had approached Modern Cinemas, D2 in the 1st suit, only in 2013 after the assignment to Mrs. Jeevaraja had expired.

Single and composite transaction

- (viii) Agi Music argues that the entire transaction as between Mr. Ilayaraja, Mrs. Jeevaraja and itself be viewed as a single arrangement and an implied term of 10 years be read into the Assignment Agreement. Exhibit A is common to all three (3) agreements entered into leading to the conclusion that the transaction was one single composite transaction. Thus, even the assignment agreement would have to be construed as being in force for a period of 10 years though the tenure is not specifically mentioned therein.
- (ix) The composite transaction has also been understood by Mr. Ilayaraja to be a single transaction and specific reference is made to a letter from Mr.

Ilaiyaraja dated 12.07.2011 confirming the ownership of copyright by him and describing Agi Music as his exclusive licensee.

- (x) Reliance is placed in this regard upon a decision of the Delhi High Court in the case of *Dorling Kindersley (India) Pvt. Ltd. v. Sanguine Publishers* (1956 RTC 40). The agreement in that case did not mention a term and thus the Delhi High Court embarked upon the interpretation of the phrase used therein being 'full right to publish throughout the world'. This decision is distinguished by Mr. Ilaiyaraja on facts.

Payment of Royalty

- (xi) That apart, Agi Music has defaulted in the remittances of royalty and Mr. Ilaiyaraja has reserved his right to proceed against it in this regard. The plaint is accompanied by a computation of the Royalties due and payable to Mr. Ilaiyaraja for the period 2007 to 2014 when, according to him, his intellectual property was being continuously exploited by Agi Music as follows:

ABSTRACT LIST TOTAL PENDING DUE AS ON DATE

S. No.	Year	Share Amount	Receipt	Pending Due
1	Total revenue share on 2007-2008	66,00,000	Nil	66,00,000.00
2	Total revenue share on 2009-2010	66,00,000	1,49,271.81	64,50,728.19
3	Total revenue share on 2010-2011	66,00,000	3,83,577.00	62,16,423.00
4	Total revenue share on 2011-2012	53,00,000	1,24,000.00	51,76,000.00
5	Total revenue share on 2012-2013	53,00,000	7,00,000	46,00,000.00
6	Total revenue share on 2013-2014	53,00,000	NIL	53,00,000.00
	Total outstanding due			3,37,43,151.19

Receipt on 10.06.2001 from MACP = 5,92,156.24

Receipt on 12.08.2012 from MACP = 11,80,264.73

Total outstanding to be payable by Agi Music SDN BHD.

= 3,37,43,151.19 - 17,72,420.97 = Rs. 3,19,70,730.22

- (xii) As regards the issue raised about non-payment of royalties after 2013 and thus, facet acceptance of Agi Music that the assignment was only for 5 years Agi Music argues that the payments have admittedly been made till 2012. Normally the practice of Agi Music was to make the payments for the previous financial year during the months of July to September. Thus, for the financial year 2012-13 payments were due between July to September 2013. However, when Mr. Ilaiyaraja filed his written statement to C.S. No. 308 of 2013 contending that the agreement between Agi Music and Mrs. Jeevaraja was only for 5 years, Agi Music did not make a serious attempt

thereafter to remit royalties only by virtue of the stand of Mr. Ilaiyaraja. In fact, even after this an attempt was made on 04.08.2014 to deposit royalties for 2013-14 but Agi Music was unable to do so, since Mr. Ilaiyaraja had closed that particular bank account.

- (xiii) Agi also contests the 2nd suit on the ground of non-joinder of parties. Though Mrs. Jeevaraja passed away in 2011 and the 2nd suit filed in 2014, none of the legal heirs of Mrs. Jeevaraja have been made a party to the suit. Thus, the suit is bad for non-joinder of necessary parties. Agi Music also argues that the definition of the word 'owner' in the suit agreement includes 'successor' and seeing as Mrs. Jeevaraja had passed away on 31.10.2011, the agreement would continue to bind her legal heirs including her husband, Mr. Ilaiyaraja. This argument is negated pointing out that the assignment to Mrs. Jeevaraja was itself only for a period of five (5) years and even though upon expiry of the agreement, the rights reverted back to Mr. Ilaiyaraja, there was admittedly no documentation entered into by Mr. Ilaiyaraja with Agi Music and thus, the question of continuation of the licence and publishing agreements does not arise at all. Though raised in the written submission this ground has not been seriously pursued in the course of arguments.
- (xiv) In the course of the oral hearing, an argument is advanced by Agi Music, sailing along with Echo in its stand that the copyright in a 'sound recording' vests only in the producer, that the words 'sound recording' appearing in the SRLA and SPA be struck off adopting the 'blue pencil principle' and be replaced instead by the words 'musical works'. The argument is objected to on the ground that it is an afterthought and does not find place in the pleadings. In any event, and admittedly, royalty has been paid by Agi Music pursuant to agreement dated 24.11.2007 and there is no prayer for refund of the same.
- (xv) Then again, a contradictory stand is taken by Agi Music by adopting in full the arguments of Mr. Ilaiyaraja and supporting his stand that the music composer has full rights vested in him in respect of the 'musical works' that he composes. Reliance is placed on the decision of a Division Bench of this Court in *Muthooth Financial Ltd. v. The Indian Performing Arts Society Ltd.*, OSA No. 64 of 2009, order dated 9-9-2009 (Mad).
- (xvi) The decision in *Associated Hotels of India Limited v. R.N. Kapoor* (AIR 59 SC 1262) and *Didi Modes Pvt. Ltd. v. Hindi Trading Manufacturing Company* (AIR 96 Delhi 319) is referred to by Agi Music for the proposition that a transaction should have to be determined in substance and not merely upon the description of such transaction in the document. These cases are distinguished by Mr. Ilaiyaraja who points out that they relate to leave and licence under the provisions of the Delhi, Ajmer and Merwer Rent Control Act, 1994 and interpret the phrase 'a room in a hotel'. In the present case, there is no room for such interpretation since the agreements are clear and there is no room for ambiguity.
- (xvii) Mr. Ilaiyaraja places reliance is placed on the decision of the Andhra Pradesh High Court in *Holy Faith International Pvt. Ltd. v. Dr. Shiv K Kumar* (33 PTC 456) to illustrate that if the transaction in question is not *bona fide*, the Court will refrain from assisting such transaction. The decisions in *Samanth N. Balakrishnan v. George Fernandez* ((1969) 3 SCC 238 : AIR 1969 SC 1201), *Laxmi Raja Shetty v. State of T.N.* ((1988) 3 SCC 319 : AIR 1988 SC 1274) and *Ramaswaroop Bagari v. State of Rajasthan* (AIR 2002 Rajasthan 27) have been relied upon to say that no averment without

proof and establishment of the same through evidence and witnesses is acceptable, and at best, such information would constitute hearsay or secondary evidence. In the present case no evidence has been let in by either of the defendants in support of their arguments and their statements are thus, unverified and unsubstantiated, liable to be rejected in limine.

(xviii) On the question of interpretation of statutes, Mr. Ilayaraja places reliance upon the decisions in *Oriental Insurance Company Ltd. Haldwani v. Dhanram Singh* (AIR 1990 Allahabad 104) and *Hoosain Kasam Dada (India Ltd.) v. State of M.P.* (AIR 53 SC 221), to contend that an amending act cannot impair the right that is vested in a party by application of the law prevalent till amendment, unless the amending provisions makes such express intendment clear. In the present case, the Act has been amended only with effect from 2012 and as such, there is no question that the 2012 amendment would impact the position of law that prevailed prior thereto.

Suppression of facts

(xix) Several judgments have been relied upon by Agi Music (*S.P. Chengalvaraya Naidu v. Jagannath* ((1994) 1 SCC 1 : AIR 1994 SC 853); *Prestige Lights v. State Bank of India* ((2007) 8 SCC 449), *Manohar Lal (dead) by LR's v. Ugrasen (dead) by LRs* ((2010) 11 SCC 557), *Seemax Constructions Pvt. Ltd. v. State Bank of India* (AIR 1992 Delhi 197) *Gopal Krishnaji Ketkar v. Mohammed Haji Latif* (1968 3 SCR 862), *Ram Sarup Gupta v. Bishun Narain Intercollege* ((1987) 2 SCC 555 : AIR 1987 SC 1242) & *Syed and Company v. State of Jammu & Kashmir* (1995 Supp (4) SCC 422) for the proposition that suppression by Mr. Ilayaraja in the 2nd suit vitiates the same in full. However, the allegation of suppression of material facts is simply brushed aside and denied by Mr. Ilayaraja, according to whom a full and true disclosure of all material facts by him. On the other hand, it is Agi Music that has engaged in forgery of documents.

(xx) Agi Music responds stating that the argument of forgery of documents by Mr. Ilayaraja, though raised in the submissions, both oral and written does not find place in the pleadings relying upon the decision in the case of *Saradamani Kandappan v. S. Rajalakshmi* ((2011) 12 SCC 18). To a specific question as to whether the signature of Mrs. Jeevaraja is in fact hers, Mr. Ilayaraja appears to have answered 'yes' initially, subsequently saying that 'he does not know'. He also answers in response to a question as to why he had assigned the Copyright of his musical work to his wife saying that he did so since he does not follow the practice of normally signing in any such agreement.

(xxi) Mr. Ilayaraja also points out that forgery, fraud and cheating has specifically been pleaded in paragraphs 4 to 6 of C.S.625 of 2014. Moreover, according to him, forgery, fraud and illegality is rife on the face of record as can be seen from the agreement stated to be between Raja Music Universals represented by himself and Agi Music where the signatures are that of his wife and not himself.

Agency

(xxii) Agi Music also contends that the arrangement between Mr. Ilayaraja and his wife would in effect be an agency, though termed as an assignment relying upon the cases in *Krishna Bhatta v. Mundila Ganapathi Bhatta* (AIR 1955 Mad 648) and *Chairman, Life Insurance Corporation v. Rajiv Kumar Bhasker* ((2005) 6 SCC 188). The definition of 'agency' is culled out by the Supreme Court in *Chairman, Life Insurance Corporation v. Rajiv Kumar Bhasker* ((2005) 6 SCC 188) stating that '*an agent would be a person*

employed to do any act for another, or to represent another in dealings with third party and the person for whom such act is done or who is so represented is called the principal'.

(xxiii) In addition to the above, the agreement between Mr. Ilaiyaraja and Mrs. Jeevaraja does not comply with the mandatory conditions for a valid assignment under Section 19 that are, (i) the agreement should be in writing and signed by the assigner or duly authorised agent (ii) It should identify the work, the duration of the assignment and the territorial area to which it shall apply (iii) It shall mention, the royalty payable. According to Agi Music, these mandatory conditions have not been satisfied. The royalty, in this case has also been received by Mr. Ilaiyaraja and, by conduct, the agency has, in fact, been accepted by him. This argument is carried forward by relying on the following cases as well as the definition of agency by Bowstead:

(a) *Wilson v. Tumman*, [(1843) 6 MAN 236]

(b) *Rodmell v. Eden*, [(1859) 1 F&F 542]

(c) *Surendra Nath Roy v. Kedar Nath Bose*

(d) *S.N. Soni v. Taufiq Farooqi* [AIR 1976 Del 63]

(e) *M.C.S. Rajan & Co. v. National Nail Industries*

(f) *G. Vasantha Bai v. Special Commissioner and Commissioner Land Reforms*, [Madras 1998 (2) CTC 272]

(g) *K. Santhanam v. S. Kavitha through her sub-power agent K. Seerappan*

(xxiv) Specific reliance is placed on Section 196 of The Contract Act, dealing with creation of an agency by conduct of parties. According to Agi Music, Section 196 would apply even in those situations where, there was no prior agency and the Court can infer a fresh or a new arrangement of agency, where the circumstances so warrant.

(xxv) The argument on agency is opposed by Mr. Ilaiyaraja on the ground that there is absolutely no material in support of the same. He argues that such a relationship, premised on a legal understanding between the parties cannot be assumed merely for the asking by the defendants. In fact, the oral evidence by way of chief and cross-examination does not contain a single question in relation to the existence or otherwise of the relationship of agency and this argument is clearly an afterthought, liable to be rejected in limine. It is clear from agreement dated 24.11.2007 Mr. Jeeva Raja was nothing but an assignee of Mr. Ilaiyaraja and nothing more.

Restitution of losses

(xxvi) According to Agi Music, it is suffering substantial losses on account of the injunction granted in favour of Mr. Ilaiyaraja operating against it from 20.09.2014 and is thus, entitled for restitution on account of this loss. All the more so, since the delay in the present matter was only on account of Mr. Ilaiyaraja, who had violated the timeframes set by the Division Bench in O.S.A. No. 114 to 116 of 2015. The restitution is calculated by adopting an average annual royalty for the period 2007 to 2012 amounting to Rs. 2,71,360/- per year for a period of three(3) years two(2) months coming to amounting of Rs. 8,59,335/-. Alternatively, Agi Music states that the right to royalty be extended by the period when the interim injunction was in force.

(xxvii) With respect to the defence of restitution taken by Agi Music relying upon the decisions of *Southern East Coastfield v. State of M.P.* ((2003) 8 SCC 648) and *Karnataka Rare Earth v. Senior Geologist, Department of*

Mines ((2004) 2 SCC 783) Mr. Ilayaraja argues that he who seeks equity must also act equitably. Agi Music being an infringer has no right to seek equity from the Court.

(xxviii) Agi Music also relies upon a slew of decisions under the caption 'internal aid' being *Commissioner of Income Tax, Bombay v. Ahmedbhai Umerbhai & Co.* (AIR 1950 SC 134) and *Frick India Ltd. v. Union of India* ((1990) 1 SCC 400 : AIR 90 SC 689) to assist the interpretation of the statutory provisions. According to Mr. Ilayaraja, these decisions are irrelevant and unnecessary to the present matter. Internal aids are only required to aid the exercise of interpretation in the absence of clarity in the main statutory provision. In the present case, the language of the Copyright Act is clear and there is thus no necessity for any aid, either internal or external.

(xxix) Agi Music would urge that Mr. Ilayaraja not be permitted to probate and reprobate. It relies on the case of *R.N. Gosain v. Yeshpal Dhir* ((1992) 4 SCC 683 : AIR 1993 SC 352); *Bank of India v. O.P. Swarnakar* ((2003) 2 SCC 721 : AIR 2000 Supreme Court 858) and *Coffee Traders Mangalore v. Honor Resources (International Co. Ltd.)* ((2011) 10 SCC 420) in this regard, stating that Mr. Ilayaraja, having profited from the receipt of royalties pursuant to the very transaction sought to be negated by him, should not be permitted to do so by the Court. The argument that the Court will, in this case read an implied term to the effect that the assignment would be for a period of 10 years is reiterated. Reliance is placed on the 'oh of course test' whereby when something is so obvious, the Court will read it as a term to be implied into the contract. (see *Shirlaw v. Southern Foundries (1926) Ltd.*, [1930] 2 K.B. 206 quoted in *United India Insurance v. Manubhai Dharmasinbhai* (supra)).

(xxx) As regards the argument of Mr. Ilayaraja that primacy should be given to text over context in an agreement between parties, Agi Music argues that such an argument does not rule out the possibility of an implied term incorporated into contract and the Court would have to take cognizance of the entirety of the facts and circumstances prior to coming to a decision on this account.

14. Having said all of the above, Mr. Ilayaraja prays that the prayers as per C.S. No. 625 of 2014 be granted and C.S. No. 308 of 2013 be dismissed with exemplary costs, Echo prays for a dismissal of C.S. No. 625 of 2014, with exemplary costs and Agi Music for a judgment and decree allowing C.S. No. 308 of 2013 including an order for its restitution and a dismissal of C.S. No. 625 of 2014 with exemplary costs.

15. The following persons have been examined as witnesses:

Mr. R. Ilayaraja, plaintiff in C.S. No. 625 of 2014 and D1 in C.S. No. 304 of 2013 was examined as P.W.1, Mr. Agilan Lechaman, Managing Director of Agi Music was examined as D.W.1 and Mr. P. Rajasekar, Authorised Representative of Echo was examined as D.W.2.

16. The following exhibits have been marked by the respective parties:

List of Exhibits marked by the plaintiff in C.S. No. 625 of 2014:—Ex.A1-Plaintiff and Producer Council letter head dated 21.02.2014. Ex.A2-List of Movies composed by the plaintiff issued by TN Film Producers Council. Ex.A3-Defamation Complaint dated 22.05.2014 given by Fans Club of the plaintiff to the Commissioner of Police. Ex.A4-Postal Return Cover sent by plaintiff to the 1st defendant dated 12.06.2014. Ex.A5-Postal Return Cover sent by plaintiff to the 4th defendant dated 12.06.2014. Ex.A6-Notice dated 05.06.2014 of plaintiff to the 4th defendant. Ex.A7-Copy of Web Site Publication. Ex.A8-Copy of Statement of accounts of the 4th defendant who

have to settle the royalty amount of the years of 2007-2014. Ex.A9-Copy of the Catalogue. Ex.A10-Royalty paid to the plaintiff from 01.04.1984 to 31.03.1985. Ex.A11-Statement of Royalty dated 19.07.1986. Exs.A12 to A32-Invoice-Cum-Challan in Connection with Royalty dated 23.01.1987, 19.02.1987, 27.02.1987, 09.03.1987, 10.03.1987, 12.03.1987, 27.03.1987, 01.04.1987, 08.04.1987, 30.04.1987, 06.05.1987, 14.05.1987, 19.05.1987, 25.06.1987, 03.07.1987, 06.07.1987, 09.07.1987, 18.07.1987, 03.08.1987, 27.08.1987, 12.09.1987. Ex.A33-Details of the Cheque Payment made to the plaintiff dated 05.10.1987. Exs.A34 to A.40-Invoice-Cum-Challan in Connection with Royalty dated 15.10.1987, 27.10.1987, 05.11.1987, 07.11.1987, 16.11.1987, 27.11.1987, 15.12.1987. Ex.A41-Statement of Royalty from Jan. 1988 to Aug. 1988. Exs.A42 to A71-Invoice-Cum-Challan in Connection with Royalty dated 10.03.1988, 12.03.1988, 31.03.1988, 02.04.1988, 05.04.1988, 08.04.1988, 11.04.1988, 14.04.1988, 15.04.1988, 19.04.1988, 21.04.1988, 22.04.1988, 25.04.1988, 03.05.1988, 05.05.1988, 06.05.1988, 11.05.1988, 16.05.1988, 20.05.1988, 24.05.1988, 03.06.1988, 08.06.1988, 09.06.1988, 14.06.1988, 18.06.1988, 22.06.1988, 09.07.1988, 15.07.1988, 19.07.1988. Ex.A72-Statement of Royalty from Sep. 1988 to Dec. 1988. Exs.A73 to A75-Invoice-Cum-Challan in Connection with royalty dated 03.08.1988, 04.08.1988, 23.09.1988. Ex.A76 Dispatch Note from 06.10.1988 to 27.12.1988. Exs.A77 & A78-Invoice-Cum-Challan in Connection with Royalty dated 15.10.1988 & 21.10.1988. Ex.A79-Dispatch Note from 06.01.1989 to 14.03.1989. Ex.A80-Statement of Royalty from Jan. 1989 to Mar. 1989. Exs.A81 to A.85-Invoice-Cum-Challan in Connection with Royalty dated 13.01.1989, 21.02.1989, 28.02.1989, 06.03.1989, 15.05.1989. Ex.A86-Letter dated 16.05.1989 sent by plaintiff. Ex.A87-Invoice-Cum-Challan in Connection with Royalty dated 12.07.1989.

2. List of Exhibits marked by the defendant in C.S. No. 625 of 2014:—

Ex.B.1 - Producer's counsel letter in the letter head. Ex.B.2-List of movies music composed by Mr. Ilaiyaraja issued by TN Film Producers counsel. Ex.B.3-Complaint given by one Mr. M. Ramesh to the Commissioner of Police, Egmore. Ex.B.4-Postal return cover which has been sent to the first defendant's counsel. Ex.B.5-Postal return cover which has been sent to the fourth defendant's counsel. Ex.B.6 - Office copy of notice sent to the fourth defendant. Ex.B.7-Copy of web site publication. Ex.B.8-copy of statement of accounts of the fourth defendant who have to settle the royalty amount. Ex.B9.24.11.2007-Assignment agreement by the plaintiff in favour of his wife. Ex.B10-24.11.2007 Sound recording licensing agreement. Ex.B11-Sub publishing agreement 24.11.2007. Ex.B12-Letter of authorization by the plaintiff in favour of the 4th defendant dated 24.11.2007. Ex.B13 Letter of authorization by the plaintiffs wife in favour of the 4th defendant. Ex.B14-24.11.2007 CD signed by the plaintiff and his wife. Ex.B15 -06.01.2010-Let the music play on "The Hindu" -Online Newspaper article. Ex.B16-20.07.2012-SMS screenshots between the plaintiff and the 4th defendant. Ex.B17-18.05.2010 Letter for continuing membership by the 4th defendant with IPRS. Ex.B18-12.07.2011-Letter to IPRS by the 4th defendant. Ex.B19-06.01.2010-Addendum No. 1 and list of songs. Ex.B20-03.02.2010 Blog post of the managing director of the 4th defendant company. Ex.B21-12.07.2011-Letter of authorization. Ex.B22-11.12.2013-Notice for the plaintiff to the 4th defendant's advocate and reply. Exs.B23 and B24-01.04.1992 Deed of partnership entered into between the plaintiff, his wife and son. Ex.B25-immigration stamping in Mr. Agilan's Passport. Ex.B26-15.10.2004 to 23.09.2013-Statement of royalties paid by the 4th defendant. Ex.B30-Authorisation Letter. Ex.B31-09.12.1987 Paasa Paravaigal-Poombhar Production. Ex.32-08.10.1981 Payanangal Mudivathillail-Motherland Pictures. Ex.33-22.11.1989-Keladi Kanmani-Vivek Chitra. Ex.B34-

02.07.1990-Enn Rasavin Manasile-Redsun Art Creations. Ex.B35 01.06.1983-Oru Odai Nadhiyagiradhu-Chitralaya Movies. B36-17.10.1988 Varusham 16-Ganga Chitra. Ex.B37-16.05.1990-Gopura Vasalile-Arul Nidhi arts. Ex.B38-03.10.1985 Padum Paravaigal-K.R. Cine Arts. Ex.B39-14.06.1990 Michel Madhan Kamarajan-P.A. Art Production. Ex.B40-12.09.1990-Nadigan-Raj Film International. Ex.B41.27.12.1990-Dharmadurai-Rasi Kalamandhir. Ex.B42-07.02.1991-Chinna Thambi-K.B. Films. Ex.B43-14.06.1990 Captain Prabahkaran-I.V. Cini Productions. Ex.B44-22.03.1989-Siva-Kavithaalayaa Productions. Ex.B45—08.11.1989-Kizhakku Vasal-Sathya Jothi Films. Ex.B46-09.05.1988-Dharmathin Thalaivan-Dhandayuthapani Films. Ex.B47-20.12.1990-Kaval Geetham-Vasan Brothers. Ex.B48-3.01.1991-Vetri Padigal-Chitramahal & S.A. Enterprises. Ex.B49-23.02.1982-Pudhu Kavithai-Kavithaalaya. Ex.B50-23.05.1990 My Dear Marthandan-Sivaji Productions. Ex.B51-10.06.1990 Adhisiya Piravi-Sri Lakshmi Productions. Ex.B52-19.05.1986-Maaveeran-Padmalya Pictures/R.K. Productions. Ex.B53-24.06.1988-Pick Pocket-K.B. Films. Ex.B54 01.02.1990-En Uyir Thozhan-B.R. Art Films. Ex.B.55-18.11.1989 Anjali-Sujatha Productions. Ex.B56-14.03.1988-Gayathiri Films. Ex. B57-03.02.1990 Mallu Veati Minor-Everest Films. Ex.B58-14.06.1990-Pudhu Paatu-Ilaiyaraaja Creations. Ex.B59-05.08.1989-Thalattu Paadava-Rawoother Films. Ex.B60-28.03.1988-Guru Sishyan-P.A. Art Productions. Ex.B.61-07.11.1986-Kadal Parisu-Sathya Movies. Ex.B62-07.11.1986-Mandhira Punagai-Sathya Movies. Ex.B63-17.01.1989-Vaathiyar Veetu Pillai-Raja Films International. Ex.B.64-24.07.1990-Sirayil Sila Raagangal-Sri Lakshmi Vani Pictures. Ex.B65-14.12.1990 Pudhu Nellu Pudhu Naathu-Mookambikai Cine Arts. Ex.B66-21.11.1986-Ninaive Oru Sangeetham-V.N.S. Films. Ex.B67-15.06.1989-Thiruppumunai-B.K. Enterprises. Ex.B68-02.12.1989-Orru Vittu Orru Vandhu-S.P.T. Films. Ex.B69 26.03.1983-Adutha Varisu-Dwarakesh Chitra. Ex.B.70-14.11.1990-Thanthu Viten Ennai-Chitraalaya Movies. Ex.B71-25.11.1987-Poonthota Kaavalkaran-Tamil Annai Cine Creations. Ex.B72-25.06.1989-Engitta Mothathe-Rajeswari Productions. Ex.B73-11.05.1990 -Mownam Sammadham-Kaycee Films Combines. Ex.B74-23.09.1985-Aan Paavam-Alamu Movies. Ex.B.75. Ex.B75-04.11.1988-En Purushan Enakku Mattumthan-Manthraalaya Cine Creations. Ex.B76-10.09.1984-Thendrale Ennai Thodu-Devi Royal Productions. Ex.B77-14.02.1990-Unnai Solli Kutramillai-Kavithaalayaa Productions. Ex.B78-27.04.1985-Poove Poochudava-Navodhaya Films. Ex.B79-31.12.1983 Nooravadhu Naal-Thirupathy Samy Pictures. Ex.B80-30.11.1983-Idhayakoil-Motherland Pictures. Ex.B81-30.11.1983-Naan Padum Padal-Motherland Pictures. Ex.B82-30.11.1983 Udhaya Geetham-Motherland Pictures. Ex.B83-30.11.1983. Unnai Naan Santhithen-Motherland Pictures. Ex.B84-08.10.1981-Thanikaatu Raaja-Suresh Productions. Ex.B85-09.09.1986-Sippikul Muthu-Poornodhaya Movie Creations. Ex.B86-14.03.1985-Naan Sigappu Manithan-Lakshmi Productions. Ex.B87-24.03.1990 Sir I Love You-Jagan Mohini Films. Ex.B88-02.06.1983-Thangamagan-Sathya Movies. Ex.B89-28.06.1985-Padikkathavan-Sree Eswari Productions. Ex.B90-14.08.1990-Eeramana Rojave-Kayar Enterprises. Ex.B91-17.08.1990 Thangamalai Thirudan-Vijayalakshmi Art Pictures. Ex.B92-03.02.1990-Manidha Jathi-Everest Films. Ex.B93-10.03.1982-Kadhala Oviyam-Manoj Creations. Ex.B94-26.04.1985-Kadalora Kavithaigal-Mookambika Art Creations. Ex.B95-15.12.1982-Vellai Roja-Film Co. Ex.B96-27.02.1990 Pudhiya Raagam-Ambrish Pictures. Ex.B97-04.08.1989-Pulan Visaranai-I.V. Cine Productions. Ex.B98-03.07.1985 Kannukku Maiezhdhu-Bluemoon Movies. Ex.B99-03.06.1986-Rettai Vaal Kuruvi-Sagar Combines. Ex.B100-29.08.1985-Vikram-Rajkamal International. Ex.B101-19.08.1987-Kannukkoru Vannakili-Sarvam Combines. Ex.B.102-24.04.1985-Chinna Veedu-Jaya Vijaya Movies. Ex.B103-23.07.1989-Padicha Pulla-Sri Chowdeshwari

Pictures. Ex.B104-15.11.1986-Jallikattu-Seetha Lakshmi Art Films. Ex.B105-08.02.1989-Pattukku Oru Thalaivan-Tamil Annai Cine Creations. Ex.B106-26.11.1986 Chinna Thambi Periya Thambi-Chemba Creations. Ex.B107-17.08.1989 Pattukku Naan Adimai-Sree Misri Films. Ex.B108-10.05.1985-Kungumachimzh-Sun Flower Creations. Ex.B109-15.12.1989-Arangetravelai-Sunitha Productions. Ex.B110-14.07.1986-En Jeevan Paaduthu-Panchu Associates. Ex.B111-10.09.1987-Anand-Sivaji Productions. Ex.B112-12.12.1984-Pagal Nilavu-Sathya Jothi Films. Ex.B113-27.01.1986 Neethana Andha Kuyil-Kaladharsun Films. Ex.B114-11.12.1981-Manvasanai-Gayathri Films. Ex.B115-28.03.1984-Thavani Kanavugal-Parveena Film Circuit. Ex.B116-24.11.1986-Paadu Nilave-Krishnalayaa Productions. Ex.B117-23.06.1983-Magudi-S.N.S. Productions. Ex.B118-01.08.1990-Raaja Kaiya Vacha-Aanandhi Films. Ex.B119-24.02.1990 En Arugil Nee Irundhal-Tamil Thai Movies. Ex.B120-16.01.1989-Pandi Nattu Thangam-Meenakshi Arts. Ex.B121-18.05.1988-Enga Ooru Kavakkaran-Meenakshi Arts. Ex.B122-04.08.1989-Ponmana Selvan-V.N.S. Films. Ex.B123-27.01.1990-Kavidhai Padum Alaigal-K.B. Arts. Ex.B124-11.06.1984-Sadhanai-Pragaas Productions. Ex.B125-31.03.1985-Dharmapathini-Sree Shanmugalaaya. Ex.B126-21.01.1985-Urimai-Mah Creations. Ex.B127-30.11.1985-December Pookkal-Shri N.R.K. Cine Arts. Ex.B128-14.04.1986-Manidhanin Marupakkam-Sathya Jothi Films. Ex.B129-07.03.1984-Nalla Naal-Devar Films. Ex.B130-21.02.1985-Naane Raja Naane Mandhiri-Appu Movies. Ex.B131-18.03.1985-Karimedu Karuvayan-Meenakshi Arts. Ex.B132-05.10.1985-Naanum Oru Thozhilali-Chitraalaya Movies. Ex.B133-08.01.1990-Indhiran Chandhiran-Eknath Movie Creations. Ex.B134-19.11.1984-Padikatha Pannaiyar-Karpaga Lakshmi Pictures. Ex.B135-24.08.1984-Raajarishi-Bhairavi Films. Ex.B136-22.06.1987-Manathil Uruthy Vendum-Kavithalaiya Productions. Ex.B137-16.06.1983-Kanni Rasi-Vikranth Creations. Ex.B138-19.03.1984-Kai Rasi Karan-S.K.S. Films. Ex.B139-13.10.1986-Krishnan Vandhan-S.L.S. Productions. Ex.B140-09.09.1983-Nilavu Suduvadhilalai-Raja Rajeswari Cine Arts. Ex.B141-02.05.1987-Oruvar Vazhum Aalaiyam-Royal Cine Creations. Ex.B142-23.02.1982-Kozhi Koovuthu-Pavalar Creations. Ex.B143-04.04.1984-Aduthathu Albert-Kumaravel Films. Ex.B144-06.01.1989-kavalukku Kettikaran-Thiraikoodam. Ex.B145-12.03.1986-Aruvadai Naal-Sivaji Productions. Ex.B146-10.06.1989-Anbu Kattalai-Gayathri Cine Arts. Ex.B147-01.03.1986-Ennai Vittu Pogathe-Sree Kanaga Dhara Art Films. Ex.B148-05.06.1982 Ilaamai Kalangal-Mother Land Pictures. Ex.B149-23.02.1982-Kanne Radha-Charu Chitra Films. Ex.B150-22.08.1986-Poovizhi Vasalile-Lakshmi Priya Combines. Ex.B151-25.03.1987-Ninaikka Therintha Maname-Siva Dharani Movies. Ex.B152-25.06.1988-Enna Petha Raasa-Red Sun Art Creations. Ex.B153-03.06.1987-Shenbagame Shenbagame-Sree Lakshmana Films. Ex.B154-28.02.1990-Periya Veetu Panakkaran-Meenakshi Arts. Ex.B155-16.11.1988-Enga Ooru Maapillai-V.N.R. Creations. Ex.B156-17.12.1990-Kumbakara Thangaya-Murugan Cine Arts. Ex.B157-09.03.1988-Naan Sonnathe Sattam-Sree Mandharaalaya Chitraalaya. Ex.B158-06.02.1986-Manaivi Ready-Rathnam Art Movies. Ex.B159-04.11.1988-Annannukku Jae-Sree Vijaya Jagathambal Movies. Ex.B160-01.02.1985-Jappanil Kalyanaraman-P.A. Art Productions. Ex.B161-12.06.1990-Sami Potta Mudichu-Tamil Annai Cine Creations. Ex.B162-27.02.1985-Annai Bhoomi-Devar Films. Ex.B163-15.05.1986-Ullam Kavarnta Kalvan-Appu Movies. Ex.B164-03.07.1987-Gramathu Minnal-Sree Krishnaalaya Arts. Ex.B.165-14.10.1988-Dharmam Vellum-Kalachithra. Ex.B.166-13.10.1988 Paadatha Theaneekal-Poombuhar Productions. Ex.B167-05.09.1985-Isai Padum Thendral-N.C. Creations. Ex.B168-03.11.1982-Aayiram Nilave Vaa-New Wave Pictures. Ex.B169-20.11.1985 Sirai Paravai-Mandraalaya Cine Creations. Ex.B170-19.05.1985-Geethanjali-Pavalar

Creations. Ex.171-13.04.1984-Eeti-Vivekananda Pictures. Ex.B172-13.10.1988-Thendral Sudum-G.B. Art Combines. Ex.B173-29.05.1987-Iniya Uravu Poothathu-Rajakaliyamman Productions. Ex.B174-26.01.1983-Ezuthatha Sattangal-Siva Shankar Creations. Ex.B175-04.11.1988-Ninaivu Chinnam-Tamil Nadu Movies. Ex.B.176-10.11.1982-Mudivalla Aarambam-N.M. Enterprises. Ex.B177-15.05.1989-Marudhupandi-Ponmanam Films. Ex.B178-03.02.1982-Ninaivellam Nithya-Siva Sakthi Films. Ex.B.179 24.06.1983-Ullam Urugudhadi-Ganesa Arts. Ex.B180-29.10.1983-Komberi Mookkan-Lakshmi Santhi Movies. Ex.B181-11.02.1987-Chinna Kuyil Paaduthu-Karpagam Films. Ex.B182-02.02.1987-Ore Oru Gramathile-Aries Enterprises. Ex.B183-30.12.1986-Illam-M.L.G. Creations. Ex.B.184-21.08.1984-Pudhir-Kamadhenu Art Films. Ex.B185-13.07.1990-Thanga Thamaraiyal-Gangai Film Circuit. Ex.B186-31.10.1986-Alapirandhavan-Prakash Productions. Ex.B187-23.06.1983-Pozhuthu Vidinjachu-Suraj Enterprises. Ex.B188-24.11.1983-Alai Osai-Thirumal Cine Films. Ex.B189-04.07.1984-Raaja Gopuram-Sree Jayanthi Cine. Ex.B190-24.07.1989-Pondati Thevai-Vivek Chithra. Ex.B191-09.05.1983-Anne Anne-Kalaivani. Ex.B192-20.09.1984-Selvi-Dhandayuthapani Films. Ex.B193-12.03.1984-Anbulla Rajinikanth-S.T. Combines. Ex.B194-23.02.1983-Anbe Odi Vaa-K.R. Art Pictures. Ex.B195-14.04.1984 Kaikodukkum Kai-Sree Ragavendhiras. Ex.B.196-30.08.1987-Irandil Ondru-S.P.T. Films. Ex.B197-11.03.1983-Kokkarako-Pavalar Creations. Ex.B198-09.07.1986 Vazhga Valarga-Niruma Creations. Ex.B199-16.07.1986 Salangayil Sangeedham-Suprajeet. Ex.B200-11.06.1988-Paarthal Pasu-C.R. Productions. Ex.B201-05.10.1985-Maragadha Veenai-Naveena. Ex.B202-08.02.1986-Thaikku Oru Thaalattu-K.R.G. Films Circuit. Ex.B203-27.01.1984-Anbin Mugavari-Sree Meenakshi Productions. Ex.B204-25.07.1989-Raaja Raajathan-Dhanisha Pictures. Ex.B205-26.06.1990-Amman Koil Thiruvizha-Sree Bairavi Combines. Ex.B206-15.05.1989-Pagalil Pournami-Kalpana Arts. Ex.B207-16.10.1982-Malayoora Mammattayan-Sree Devi Bhagavathi Films. Ex.B208-16.10.1982-Meendum Parasakthi-Sree Devi Bhagavathi Films. Ex.B209-06.04.1983 Ennai Paar En Azhagai Paar-Crown Films. Ex.B210-02.09.1985 Iravu Pookkal-Sree Siva Hari Films. Ex.B211-06.09.1982-Anbulla Malare-V.V. Combains. Ex.B212-23.02.1982-Ethanai Konam Ethanai Paarvai-V.M. Movies. Ex.B213-12.05.1982-Jothi-Thai Creations. Ex.B214-19.05.1982-Kavithai Malar-S.M. Creations. Ex.B215-28.01.1985-Thazhuvadha Kaigal-Swarnamiga Movies. Ex.B216-19.09.1981-Moondram Pirai-Sathya Jothi Films. Ex.B217-08.10.1981-Aanadha Raagam-Panchu Arts. Ex.B218-27.09.1981-Thai Mookambikai-Siva Shankar Creations. Ex.B219-24.07.1985-Mudhal Mariyadhai-Manoj Creations. Ex.B220-25.05.1989-Siraiyil Pootha Chinna Malar-Sree Thirumala Cine. Ex.B221-06.06.1983-Manaivi Sollae Mandiram-Everest Films. Ex.B222-31.05.1983-Meendum Oru Kathal Kathai-Artist Corporation. Ex.B223-12.02.1983-Veetiley Raman Veliyile Krishnan-Panchu Movies. Ex.B224-07.02.1983-Yuha Dharmam-Karpagam Studios. Ex.B225-06.10.1982-Nee Thodum Pothu-Devi Moogambigai Films. Ex.B226-18.08.1982-Antha Sila Naattkal-Movie Mogambiga. Ex.B227-26.01.1983-Ragangal Maruvathillai-Vasan Productions. Ex.B.228-29.04.1982-Magane Magane-Panchu Movies. Ex.B229-15.04.1982-Muthu Engal Sothu-Parameshwari Enterprises. Ex.B230-15.04.1982-Raani Theni-Parameshwari Enterprises. Ex.B231-18.05.1982-Gopurangal Saivathillai-Everest Films. Ex.B232-14.12.1981-Kansivanthal Mansivakkum-Cine India. Ex.B233-30.10.1981-Manjal Nilla-Manikkam Films. Ex.B234-08.10.1981-Bhagavathypuram Railway Gate-S.P. Creations. Ex.B235-08.10.1981-Nizhal Thedum Nenjangal-Siva Chithra Pictures. Ex.B236-08.10.1981-Kelviyyum Naane Pathilum Naane-S.T. Combines. Ex.B237-17.09.1982-Indru Nee Naalai Naan-Geetha Kamalam Movies. Ex.B238-03.12.1984-Unnai Thedi Varuven-K.R.G. Films Circuit. Ex.B239-24.09.1984-Pillai

Nila-Kalai Mani Movies. Ex.B240-15.09.1982-Geetha Vazhipaadu-D. Raja. Ex.B241-31.08.1984-January 1 - P.N.R. Pictures. Ex.B242-29.02.1984-Needhiyin Marupakkam-V.V. Creations. Ex.B243-30.12.1983-Neram Nalla Neram-V.R. Movies. Ex.B244-12.11.1983-Murattu Karangal-Hem Nag Films. Ex.B245-09.09.1983-Thalaiyanai Mandhiram-Naveena Films. Ex.B246-17.08.1983-Kannathorakkanum Saamy-Punidha Cine Arts. Ex.B247-04.12.1985-Enakku Naane Nidhipathi-K.C. Films. Ex.B248-07.07.1985-Unakkagave Vazhgiren-Krishnaalaya Productions. Ex.B249-22.11.1984-My Dear Kuttichathan-Navodhaya Films. Ex.B250-23.03.1985-Thangamama-Film Co. Ex.B251-30.08.1987-Sakkarai Panthal-Meenakchi Arts. Ex.B252-12.06.1987-Kadamai Kanniyam Kattuppaadu-Raj Kamal Films International. Ex.B253-22.05.1987-Puyal Paadum Paattu-Poombuhar Productions. Ex.B254-22.12.1986-Dhoorathu Pachai-Sree Lakshmi Art Movies. Ex.B255-25.03.1986-Africavil Appu-Sree Rajeswari Creations. Ex.B.256-29.06.1989-Thangamana Raasa-Rekha Movies. Ex.B257-29.06.1989-Kaiveesamma Kaiveesu-M.B.C. Arts. Ex.B258-14.10.1988-Manamagale Vaa-Raja Enterprises. Ex.B259-18.05.1988-Irumbu Pookkal-Pushpalaaya Movies. Ex.B260-02.01.1988-En Uyir Kannamma-S.K.S. Films Creations. Ex.B261-30.01.1991-Pudhiya Swarangal-Lalitha Anjeneya Combines. Ex.B262-14.12.1990-Kadhal Devathai-Vijayanthi Movies. Ex.B263-01.10.1990-Edhir Katru-Muktha Films. Ex.B264-18.09.1990-Unnai Vazhthi Paadukirean-Mother Land Pictures. Ex.B265-05.07.1990 Unnai Nenachean Paattu Padichaen-Sri Pathmavathi Movie Maker. Ex.B266-20.10.1982-Mella Pesungal-Kanya Creations. Ex.B267-16.03.1985-Natpu-Veeralakshmi Combines. Ex.B268-07.10.1982-En Selvame-M.A.M. Films. Ex.B269-14.12.1981-Agaya Gangai-Srini Enterprises. Ex.B270-01.02.1982-Saattai Illa Bhambaram-Punidha Cine Arts. Ex.B271-23.01.1983-Oomai Veyil-Dimple Creations. Ex.B272-28.03.1983-Devi Sridevi-Abhi Arts. Ex.B273-14.11.1983-Sanganatham-Jana Sakthi Creations Pvt. Ltd. Ex.B274-17.08.1984-Ambhigai Neril Vandhal-Ram Arts. Ex.B275-08.11.1984-Raja Yuvaraja-Beeyes Art Films. Ex.B276-04.08.1990-Oorellam Un Paattu-Ayyanar Cine Arts. Ex.B277-26.06.1990 Vellaiyadevan-Eknath Movie Creations. Ex.B278-26.06.1990-Thaayamma-P.M.S. Cine Arts. Ex.B279-31.5.1990 Vetri Karangal-A Lotus Film Company. Ex.B280-13.07.1989-Madhurai Veeran Enga Saamy-K.B. Films. Ex.B281-07.03.1990-Dhuruva Natchathiram-Premier Production. Ex.B282-12.02.1990-Nee Serithal Deepavali-Usha Productions. Ex.B283-10.11.1982-Malargal Nanaiginrana-Lakshmi Chithra Movies. Ex.B284-18.11.1981-Nalladhu Nadandhe Theerum-K.N. Films. Ex.B285-15.11.1982-Thangamadi Thangam-Vasanthaalayam. Ex.B286-31.10.1986-Therkathi Kallan-Everest Films. Ex.B287-10.03.1981-Engeyo Ketta Kural-P.A. Art Production. Ex.B288-10.06.1989-Paasa Mazhai-Poombuhar Production. Ex.B289-14.05.1986-Shri Shiradi Sai Baba-Edison Enterprises.

17. On the basis of the pleadings, the following issues and additional issues have been framed in each suit:

Issues in C.S. No. 308 of 2013:

1. Has the 1st Defendant assigned his copyright in relation to the songs which are the subject matter of this Suit to his wife vide Assignment Agreement dated 24.11.2007 and if so, what is the period of assignment?
2. Did the 1st defendant's wife (as an assignee of the 1st Defendant) and the Plaintiff enter into a Sound Recording Licensing Agreement ("SRLA") dated 24.11.2007 and if so what was the period of such Agreement?
3. Does Section 19(5) of the Copyrights Act apply to the present facts?
4. Is this a fit case to read in an implied term into the Assignment Agreement in relation to the term of the Agreement?

5. *Has the 1st Defendant breached the terms of the Assignment Agreement dated 24.11.2007 and/or SRLA?*
6. *Has the 2nd Defendant infringed the copyright which was exclusively granted by the 1st Defendant's wife to the Plaintiff?*
7. *Should the 2nd Defendant be restrained from breaching the negative covenant contained in Clause 2 of the SRLA?*
8. *Is the Plaintiff entitled to the reliefs sought for?*

Issues in C.S. No. 625 of 2014:

1. *Whether the suit is barred by law in view of the provisions of the Copyright Act, 1957 especially with regard to "sound recordings"?*
2. *What is the role played by the plaintiff in the schedule mentioned "cinematograph films" and whether that role entitles him to any right over the said film songs and sound recordings under the Copyrights Act, 1957?*
3. *Whether the plaintiff is the "owner" of the "sound recordings" in the schedule mentioned films?*
4. *Whether the 2nd defendant has obtained rights of the "sound recordings" from various producers of the movies mentioned in "Annexure 1" of the Written Statement?*
5. *Whether the plaintiff is entitled to any relief against the 2nd defendant in view of the agreement entered into between the 2nd defendant and the various producers of the movies mentioned in "Annexure 1" of the Written Statement?*
6. *Whether the 2nd defendant is entitled to exploit the rights over the "sound recordings" with regard to songs/music of the movies mentioned in "Annexure 1" of the Written Statement?*
7. *Whether the Suit is liable for misjoinder of parties and whether the plaint discloses any nexus between the defendants?*
8. *Whether the agreement between the plaintiff and his wife and consequently the agreement between the plaintiff's wife and the 4th defendant is valid in the eye of law?*
9. *Has the plaintiff assigned his copyright in relation to the songs which are the subject matter of this suit to his wife vide Assignment Agreement dated 24.11.2007 and if so, what is the period of assignment?*
10. *Did the plaintiff's wife (as an assignee of the plaintiff) and the 4th defendant enter into a Sound Recording Licensing Agreement ("SRLA") dated 24.11.2007 and if so what was the period of such Agreement?*
11. *Does Section 19(5) of the Copyrights Act apply to the present facts?*
12. *Has the plaintiff breached the terms of the Assignment Agreement dated 24.11.2007 and/or SRLA?*
14. *To what other reliefs, the parties are entitled to?*

18. Though extensive arguments have been advanced on agency, stating that Mrs. Jeevaraja would constitute an agent of Mr. Ilaiyaraja, no issue has been framed in regard to this. In the light of the provisions of order XIV Rule 3, I thus proceed to frame an additional issue thus.

'Is Mrs. Jeevaraja is an agent of Mr. Ilaiyaraja for the purposes of the transaction between herself and Agi Music'.

19. Before I commence with the discussion and conclusions on the issues framed, certain incidental points have been raised by both parties that, I believe, are not intrinsic to the legal issues raised or to the conclusions thereupon. One such is the absence of reference to the Assignment Agreement, SRLA and the SPA in the plaint of Mr. Ilaiyaraja leading Agi Music to allege suppression as well as the argument of Mr.

Ilaiyaraja that the documents relied upon by Agi Music are forged. Having stated so, he does not pursue the argument by seeking reference of the documents to forensic examination. References have also been made by Agi Music as well as Mr. Ilaiyaraja to text messages exchanged to which I have not adverted in the narration. This is for the reason that it is the legal issues that have been pursued seriously by the parties in the course of the hearing and not the above fringe issues that are wholly immaterial to determine the crux of the suits. Thus, I restrict the discussions and conclusions to only the legal issues that arise and that have been argued before me. In any event, no issues have been framed in regard to the fringe issues and a determination of the same is thus unnecessary.

20. Many of the issues overlap and can be bifurcated into three (3) distinct groups relating to a single issue each. I have hence demarcated the same into three (3) separate sets.

21. The first set of issues is really the crux of the 2nd suit and a decision thereupon would address the allocation of the rights under the Act to the various stakeholders engaged in the creation and production of a cinematograph film, specifically, the producer, though not a party before me, and the music composer.

1. *Whether the suit is barred by law in view of the provisions of the Copyright Act, 1957 especially with regard to "sound recordings"?*
2. *What is the role played by the plaintiff in the schedule mentioned "cinematograph films" and whether that role entitles him to any right over the said film songs and sound recordings under the Copyrights Act, 1957?*
3. *Whether the plaintiff is the "owner" of the "sound recordings" in the schedule mentioned films?*
4. *Whether the 2nd defendant has obtained rights of the "sound recordings" from various producers of the movies mentioned in "Annexure 1" of the Written Statement?*

22. The second set of issues touches upon the interpretation of the statutory provisions in order to determine the rights that vest in each of the parties. The questions raised are, who can be said to be 'owner' of the 'sound recording' and whether Echo has obtained any right in respect of the 'sound recordings' from the producers of the scheduled films. For this purpose, one would have to examine the sample agreement entered into by Echo with a production company and I extract hereunder an agreement entered into by Echo with a production company in respect of the film 'Paasapparavaigal', as a sample, all agreements filed along with suit being similar/identical to the same:

'An Agreement made this 9th day of December 1987 between ECHO Recording Co. having its Office at Cisons Complex 2nd floor, 150, Montieth Road, Egmore, Madras - 600008, herein after called "The Company" (which expression shall mean and include its successors and assigns) of the One Par and

*M/S. POOMPUHAR PRODUCTIONS,
No. 7, Second Street,
South Gopalapuram,
Madras - 600086.*

Hereinafter called "The Producer" which expression shall include his/her successors, his/her heirs, executors, administrators and assigns] of the Other Part.

WHEREAS:

- a) The Producer is actively engaged, inter alia in producing cinematograph films:*
- b) The Company is actively engaged, inter alia, in the manufacture, marketing and sale of records, and pre-recorded cassettes.*
- c) The Producer is desirous to assign and transfer to the Company, the rights*

hereinafter mentioned:

NOW IT IS HEREBY AGREED by and between the parties hereto as follows:

INTERPRETATION: In this Agreement, unless the context otherwise admits the following expressions shall have the meanings assigned to them:

- (a) "Cinematograph film, "work", "musical work", "literary work", "dramatic work", "artistic work" shall have the meanings assigned to them by the provision of the Copyright Act, 1957;
- (b) "record" includes any disc, tape perforated roll and all other devices (Now or hereafter Known) in which sounds and/or visual images are embodied for reproduction therefrom by any means whatsoever, including electrical, mechanical or magnetic means, or by devices commonly known as audiovisual devices, with the exception of cinematograph film, of any gauge, as used in movie theatres;
- (c) "recording" means the aggregate of the sounds and/or visual images embodied in, and capable of, being reproduced by means of record;
- (d) "performance" includes any mode of presentation by the use of record and shall include such presentation by means of radio diffusion;
- (e) "radio diffusion" includes communication to the public by means of wireless or cable diffusion, whether in the form of sound or visual images or both;
- (f) "reproduction" shall include, in relation to the recording, storing of such recording in any device by means of which it can be perceived
- (g) "original recording" shall include stereotype, tape, film, soundtrack, original plate, block, mould, matrix, transfer, negative or any other device used or intended to be used for making records.

All other expressions shall have the meaning assigned to them under the Copyright Act, 1957, or the statutory modification thereof for the time being in force and the meaning assigned to them thereunder.

2. the Producer hereby assigns and transfer to the Company, absolutely, free from all encumbrance without any limitation for the entire world the copyright in so far as it extends to the exclusive right to make records from recording embodied in:

- (i) the cinematograph film(s) entitled, or indentified as:—
'PAASAPPARAVAIGAL'
- (ii) the original recordings of any music or musical, literary, dramatic and/or artistic work(s) which may have been recorded by, or for, the PRODUCER for the purpose of, and/or with the intent of, incorporating the same in the above cinematograph film(s) irrespective whether or not the same is/are so incorporated in the final version(s) of the cinematograph film(s)
- (iii) The Company has this day paid 1001/- (Rupees one thousand and one only) as part consideration on the Royalty Agreement.

3. The right(s) hereby assigned and/or agreed to be assigned and transferred to the Company in the cinematograph film(s) and/or original recording(s) as stated under 2(i) and (iii) above shall stand assigned and transferred in favour of the Company protanto upon the completion of the whole or part of the cinematograph films(s)/original recordings(s) and shall include the right to publish and the reproduction rights thereof.

4. Forthwith upon completion of whole or part of the cinematograph film (s)/original recordings(s), the Producer shall, at his expense, deliver to, and supply, the Company with such cinematograph film(S)/original recording(s), in whole or part, in order to enable the Company to make records there from.

5. The copyright assigned and/or agreed to be assigned and transferred to the

Company hereunder shall vest in the Company the exclusive rights which may be vested in the owner of copyright by virtue of, and subject to the provisions of, the Copyright Act, 1957, or the statutory modification thereof for the time being in force, as also those recognised by the relevant International Conventions and shall include, but not be limited to, the exclusive right to do, or authorise the doing of, any other following acts:—

- (i) to make any other record embodying the same recording;
 - (ii) to reproduce any or all recording(s) covered by this agreement on record together with any other work(s);
 - (iii) to cause or permit performance of the recording(s) embodied in the records in public, and/or to publish the musical, literary dramatic and/or artistic work (s) embodied in the recording(s);
 - (iv) to communicate the recording(s) embodied in the record by radio diffusion;
 - v) to manufacture, market, sell, lease, licence, distribute, advertise, promote or otherwise exploit in any manner in any fields of use, records produced hereunder, and allow others to do so, at such prices and upon such terms and conditions, and under such trade mark(s) or label(s) or name(s) as the Company shall desire;
 - (vi) to control the physical property of the original recording(s). Reference to the doing of any act referred to above, or to refraining therefrom, shall include reference to the doing of, or refraining from, the act in relation to either the whole or part of the recording(s)/record(s).
6. The Producer hereby warrants and covenants with the Company as follows:—
- (a) that the copyright assigned and transferred, or agreed to be assigned or transferred, or intended to be so, hereunder, shall at all times, prior to its being vested in the Company hereunder be the sole and exclusive right of the Producer, free from all encumbrances;
 - (b) to have obtained approval and/or consent of the author(s) and performer(s) or any other person(s) participating in any work(s) which is/are incorporated in the cinematograph film(s) and/or the original recording(s) recognising the respective copyright and the exclusive right(s) assigned and transferred to the Company hereunder. The Producer further indemnifies, and holds indemnified, the Company against all and any claims and damages arising out of the exercise of right(s) assigned and transferred to the Company in this regard;
 - (c) to deliver to the Company photograph(s) or other likeness(es) of the artist (s), performer(s) and the author(s) whose work(s) may have been incorporated in the cinematograph film(s) and/or original recording(s), together with their respective biographical material, with the right to Company, accompanied, if so desired by the Company, by letters of consent of such artist(s) performer(s) and author(s) to use the photograph(s) or other likeness(es) or biographical material for advertising and publicity and for all record sleeves and for any other matter connected with the making, distribution, marketing and sale of records;
 - (d) to provide to the Company, at request, the Producer's logos, trademarks, stylized lettering/designs etc. relating to the cinematograph film(s)/original recording(s) for incorporating them on the labels, covers sleeves, catalogues, etc. of, and for advertising the records, and to grant to the Company the right to do so;
 - (e) not to do, either during the period of the Agreement or at any time thereafter, any act or thing which may in any manner affect or prejudice the right of the Company hereunder.

(f) to supply, simultaneously with or prior to, the delivery of each cinematograph film/original recording, to the Company in writing the correct title(s), Score(s) etc., of the work(s) recorded therein, and the names of the author(s) and composer(s) thereof, together with any additional information such as the names of recording artists(s), year and place of such original recording etc.

7. (a) In full consideration of the assignment and transfer of rights by the Producer to the Company under the Agreement the Company shall pay to the Producer an all-in-royalty in respect of all records manufactured, sold and not returned hereunder and calculated on the Company's domestic dealer price.

(exclusive of sales taxes, excise duty, octroi and other taxes and duties levied and less a packaging deduction 20% of the dealer price for pre-recorded tapes). The all-in-royalty shall be for each half-yearly accounting period:

12.5% if the total half yearly sales value is upto Rs. 2,00,000

13.5% if the total half yearly sales value is between Rs. 2,00,001 and Rs. 10,00,000.

14.0% if the total half yearly sales value is exceeding Rs. 10,00,001.

For the determination of the all-in-royalty rate applicable, the sales value will be calculated at Company's domestic dealer price (exclusive of taxes, packaging allowance etc. as above) of all records embodying the Producer's recordings, including those of earlier contracts, sold by the Company and not returned. In consideration thereof, this agreement shall supersede all previous agreements between the Company and the producer, effective from the first half-yearly accounting period after date of this Agreement.

The all-in-royalty on sale of records by the Company's licencees will be computed separately on the same calculation basis as above.

(b) If the Producer's recordings are incorporated only in part of the records made or licensed by the Company, the all-in-royalty shall be calculated pro rata according to the proportion of the Producer's recordings to the total number of title on those records.

(c) Promotional records free or bonus records, as well as excerpts from the recordings, used by the Company for publicity and advertising purposes or otherwise, shall be excepted from payment of royalty.

(d) The royalty payable by the Company to the producer as herein provided shall be the only consideration payable and the Producer warrants and represents that he will satisfy all claims, if any, of third parties in connection with recording (s) of which the record is made hereunder, and agrees to indemnify and keep indemnified, the Company in respect of all demands, claims, actions and proceedings in that behalf.

(d) The Company will pay royalties as long as the recordings covered by the Agreement are sold by the Company or its licencees, but not for longer than the period for which the recordings are legally protected. However, in the event of the producer committing a breach of the provisions of this or any other agreement with Company, then, in that even, without prejudice to any other rights or remedies which the Company may have in that behalf, the Company's obligation to pay royalty to the Producer as herein before provided shall cease until such time as the Producer may have remedied such default.

8. The Company shall furnish to the Producer for each half-yearly accounting period statements showing the number and type of records made from the Producer's recordings sold by the Company during the half-year and not returned, and the amount of royalty due to the Producer in respect thereof, and the Company shall pay thereafter the amount due to the Producer within 90 days.

Royalties payable for sales outside of India shall be accounted and paid for only after the Company has received statements and payments from its clients/licenses. If remittance to India is prevented by currency or other government restrictions, royalty amounts due would be made available to the Producer in the country concerned as permissible by law. From such royalties the Company shall be entitled to deduct all taxes and dues as demanded by the respective governments of the countries in which such records are sold or accounted for. The Producer, at his/her own expense, shall be entitled to receive upon so requesting, from the Company in writing a certificate of the Company's auditors as to the correctness of any such statements.

9. *If the fulfilment of this Agreement or any part thereof shall become impossible by reason of force majeure, or any other reason outside the control of the parties, then either party shall be entitled (by giving notice in writing to the Other Party hereof and without incurring liability for damages or any other compensation) to suspend the operation of the Agreement or any part thereof until such time as such fulfilment shall again become possible.*

10. *This Agreement shall be construed according to the law of India and all matters, claims and dispute arising in respect hereof shall be subject to the exclusive jurisdiction of the relevant courts at Madras.*

11. *The invalidity of any one provision of this Agreement shall not invalidate the Agreement in its entirety and any amendment, modification or alteration thereof shall be valid and binding only if reduced into writing and executed by both the parties.*

12. *Any notice arising from the terms of this agreement will be deemed to have been duly served by either party on the other if it is sent by registered post to the addresses entered herein above or to any other addresses which might have been notified and duly acknowledged by the parties.'*

23. Echo is the company and Poompohar the producer, and the agreement is for the assignment of the copyright for the exclusive right, unlimited in time, to make records from the 'sound recordings' embodied in the film 'Paasapparavaigal' and the 'sound recordings' of any music, musical, literary, dramatic or artistic work that may have been recorded by the producer with the intent of incorporating the same in the film irrespective of whether or not it has been so incorporated.

24. The agreement proceeds on the assumption that the producer holds such right to begin with and thus, there is no restriction or limitation placed upon him to effect such assignment to the company. The assignment of the copyright entitles Echo to make any other record embodying the same recording, to produce any other recording, to cause or permit performance of such recordings, to publish the works embodied in the recordings, broadcast the recordings by radio, to manufacture/market/sell/lease/licence/distribute/advertise/permit or exploit the recording in any manner whatsoever and permit others to do so such works and to control the physical property of the original recordings.

25. The agreement required the producer to supply, simultaneous or prior to the delivery of the cinematograph film/sound recording, the correct title(s), score(s) and details of composer(s) thereof together with information such as the names of recording artist(s), year and place of original recording and all other details relating to the works themselves.

26. Royalty is to be paid to the producer by the company based on the sales of records for which a methodology has been set out for the period when the recordings are protected under the Act. These are the aspects of the agreement as relevant to this matter.

27. The producer of the film has assigned the entire rights in the musical work and

songs in the cinematograph film to Echo. Obviously, the producer could not have passed on a better right to Echo than what he had had himself to begin with, which brings us to the legal issue of what the right is, that vested in the producer in the first instance.

28. According to Mr. Ilayaraja, Echo proceeds on the fallacy that the producer is the owner of the 'sound recording'/'musical work' comprised in the films. However, since he has, at no point of time, assigned or transferred such rights to the producer, he retains the right in his music compositions as the first owner of the copyright comprised in these works. In such circumstances, he argues that when he continues to retain such works, there is no possibility of such works having been assigned to Echo by the producer, the latter not holding any right over the same.

29. Both Echo as well as Mr. Ilayaraja have referred to and relied upon the several definitions and statutory provisions to support their respective stands. It is thus necessary at this juncture to refer to the provisions of the Copyright Act to understand the scheme of ownership under the Act. The statute uses two terms 'author' and 'owner', both having different and distinct meanings. The statutory provisions relevant to the resolution of the issues are as follows:

2(d) 'author' means, -

- (i) in relation to a literary or dramatic work, the author of the work;
- (ii) in relation to a musical work, the composer;
- (iii) in relation to an artistic work other than a photograph, the artist;
- (iv) in relation to a photograph, the person taking the photograph;
- (v) in relation to a cinematograph film or sound recording, the producer; and.....
(the last w.e.f. 10.05.1995)

2. [(f) 'cinematograph film' means any work of visual recording [***] and includes a sound recording accompanying such visual recording and 'cinematograph' shall be construed as including any work produced by any process analogous to cinematography including video films;]

3. [(m) 'infringing copy' means, -.....

- i. in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;
- ii. in relation to a cinematograph film, a copy of the film made on any medium by any means;
- iii. in relation to a sound recording, any other recording embodying the same sound recording, made by any means;...]
- iv. if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;]

2(uu) 'producer', in relation to a cinematograph film or sound recording means a person who takes the initiative and responsibility for making the work;

2(xx) 'sound recording' means a recording of sound from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced;

2(y) 'work' means any of the following works, namely: —

- (i) a literary, dramatic, musical or artistic work;
- (ii) a cinematograph film;
- (iii) a [sound recording];

2(ffa) 'composer' in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation;

2(p) 'musical work' means a work consisting of music and includes any

graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;

2(a) 'adaption' means,

....

[(v) in relation to any work, any use of such work involving its rearrangement or alteration;]

30. The provisions of section 13 enumerate the various classes of work in which copyright subsists, being original, literary, dramatic, musical and artistic works, cinematograph films and sound recordings. Each of these works is a separate and independent class of works and carries a distinct copyright of its own. The provision reads thus:

13-Works in which copyright subsists.-(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say, -

- (a) original literary, dramatic, musical and artistic works;*
- (b) cinematograph films; and*
- (c) [sound recording]*

....

(3) Copyright shall not subsist--

- (a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;*
- (b) in any [sound recording] made in respect of a literary, dramatic or musical work, if in making the [sound recording], copyright in such work has been infringed.*

(4) The copyright in a cinematograph film or a [sound recording] shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the [sound recording] is made....

31. Section 13(4) specifically states that a 'cinematograph film' or a 'sound recording' contain separate copyrights in themselves, not militating against the independent and unique copyrights held by constituents of such film or recording, each of which is entitled to, and holds a copyright of its own. This recognizes the position that a cinematograph film comprises of various unique components, being derivative rights, and as stated by the Supreme Court in the celebrated judgment of *IPRS* (supra), is a '*felicitous blend*', '*beautiful totality*' and '*a constellation of stars*' and it is the coming together of these unique components that make it what it is.

32. Section 14 defines copyright itself as being the exclusive right to do or to authorize various acts in respect of a work or a substantial part thereof. In the case of musical work such entitlements are wide as set out under Clause iv to vii extracted below:

*14. Meaning of copyright.—For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—*1[14. Meaning of copyright.—For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—"

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in

- circulation;*
- (iii) to perform the work in public, or communicate it to the public;*
- (iv) to make any cinematograph film or sound recording in respect of the work;*
- (v) to make any translation of the work;*
- (vi) to make any adaptation of the work;*
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);*
- (b) in the case of a computer programme,—*
- (i) to do any of the acts specified in clause (a); 2[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: 2[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme\:" Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.]*
- (c) in the case of an artistic work,—*
- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;*
- (ii) to communicate the work to the public;*
- (iii) to issue copies of the work to the public not being copies already in circulation;*
- (iv) to include the work in any cinematograph film;*
- (v) to make any adaptation of the work;*
- (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);*
- (d) in the case of a cinematograph film,—*
- (i) to make a copy of the film including a photograph of any image forming part thereof;*
- (ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;*
- (iii) to communicate the film to the public;*
- (e) in the case of a sound recording,—*
- (i) to make any other sound recording embodying it including storing of it in any medium by electronic or other means;*
- (ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;*
- (iii) to communicate the sound recording to the public.*

Explanation.— For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

33. The above provisions will have to be harmonised with the provisions of Section 17 extracted below:

17. First owner of copyright.- Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein.

Provided that--

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or*

similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work insofar as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work

- (b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration, at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;*
- (c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;*

[Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of Section 13;

34. The proviso to Section 17 sets out the exclusions to the application of the provision. Proviso (a) deals with literary, dramatic or artistic works and is not relevant to this case. Proviso (b) addresses painting, portrait, engraving or a cinematograph film made for valuable consideration at the instance of any person (in this case the producer), and states that such person (the producer) shall, in the absence of any agreement to the contrary with the creator of such painting, portrait, engraving or cinematograph film (that includes a sound recording), be the first owner of the copyright therein Proviso (c) talks about a work created in the course of the authors' employment under a contract of service or apprenticeship to which Clause (a) or Clause (b) does not apply and states that in such cases, unless the author has reserved his right to such copyright, the first owner of the copyright shall be the employer.

35. In the suits before me, the producers have not been made parties. No material has been placed on record by any of the parties to produce evidence or establish a contract between Mr. Ilaiyaraja and the producers, either of employment/apprenticeship or of retention of rights in the 'sound recording'. It is also the specific stand of Mr. Ilaiyaraja that he had never worked under a contract of service or apprenticeship with a producer. In the absence of the producers, this position is not verifiable. However, bearing in mind the stature of the composer and his pleadings in this regard, I proceed on the basis that the employer/employee relationship does not apply in the present case and for that reason, proviso (c) is not applicable.

36. A contiguous reading of the above provisions is called for to reconcile the issue before me. Section 2(d) defines 'author', in relation to a 'musical work', as the 'composer' and in relation to a 'cinematograph film' or 'sound recording' as the 'producer'. A 'cinematograph film' is defined in 2(f) to mean 'any work of visual recording, which includes a sound recording' and a 'sound recording' is defined in (xx) to be 'a recording of sounds from which such sounds may be produced regardless of the medium on which such recordings is made or the method by which the sound are produced'. A producer in relation to a 'cinematograph film' or 'sound recording' is a person who has taken the initiative and bears the responsibilities for making a 'work',

such work being defined in Section 2(y) to include a 'musical work', a 'cinematograph film' and a 'sound recording'.

37. The provisions protect the authors of original musical works, cinematograph films and sound recordings. There is an overlap in so far as a 'cinematograph film' contains within itself 'sound recordings' based on the 'musical works' of the composers that are distinct assets on their own, though wholly integrated into the cinematograph film itself. The fact that these assets have been subsumed into the main asset, however, does not take away their individuality or claim to a separate copyright that is statutorily protected by virtue of Section 13(4) as well as the proviso inserted in 2012 at the foot of Section 17 that states that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) of Section 17 shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of Section 13, being all original literary, dramatic, musical and artistic works. Thus, these rights are concurrent and operate simultaneously as well as separately. (see *Gramophone Co. Ltd. v. Stephen Carwardine & Co.* (1934 1 Ch.450))

38. The Supreme Court in the case of *IPRS* (supra), was considering an appeal filed by various film producers. The background to the appeal was that the Indian Performing Rights Society, that had as its members composers of musical works, authors of literary and dramatic works as well as artists, published tariffs laying down the fee structure for the royalties that it proposed to collect for grant of licenses for performance of the works of the members in respect of which it claimed assignment from them.

39. The tariffs fixed had been objected to by the producers of cinematograph films, who claimed ownership of the films including the musical works comprised therein. The producers had averred that the musical works had been commissioned by them for use in their films and had been utilized and incorporated in the sound tracks of the films. According to them, the rights in the entire film, including the sound track, vested in them. Their objections were rejected by the Copyright Board that was of the view that the composer of the music and the musical works retained the copyright in their works and that they could thus assign the same to the IPRS. In appeal, the producers had challenged the decision of the Copyright board before the High Court, Calcutta, which allowed the appeal holding that unless it was proved that the composer had reserved his right to the copyright in his work, he does not acquire any copyright in respect thereof, in terms of proviso (b) to Section 17 of the Copyright Act and the owner of the film, at whose instance the composition was made, became the owner of the copyright in such composition.

40. An appeal was filed before the Supreme Court by the IPRS that was dismissed, confirming the right of the producer to the copyright in 'sound recording' as part of a 'cinematograph film'. While speaking on whether the producer of a cinematograph film could defeat the right of a music composer or a lyricist by engaging him to compose music or lyrics, the Court found the solution in provisions of Section 17 and the provisos therein in the following paragraphs:

"Whether in view of the provisions of the Copy Right Act 1957 an existing and future rights of music composer, lyricist is capable of assignment and whether the producer of a cinematograph film can defeat the same by engaging the same person."

.....
It is the second part of the question which has been a hot bed of controversy between the parties that has got to be tackled. The main point for determination in regard to this part of the question is whether the composer of lyric or musical work (which in terms of section 2(p) of the Act means only a notationally written, printed or graphically produced or reproduced music) retains a copyright in the lyric or

musical work if he grants a licence or permission to an author (owner) of a cinematograph film for its incorporation in the sound track of a cinematograph film. For a proper appreciation and determination of the contentions raised before us, it is necessary to notice certain provisions of the Act.

.....

This takes us to the core of the question namely, whether the producer of a cinematograph film can defeat the right of the composer of music or lyricist by engaging him. The key to the solution of this question lies in provisos (b) and (c) to section 17 of the Act reproduced above which put the matter beyond doubt. According to the first of these provisos viz. proviso (b) when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film, or composing music or lyric there-fore i.e. the sounds for incorporation or absorption in the sound track associated with the film, which as already indicated, are included in a cinematograph film, he becomes the first owner of the copyright therein 'and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other. The same result follows according to aforesaid proviso (c) if the composer of music or lyric is employed under a contract of service or apprenticeship to compose the work. It is, therefore, crystal clear that the rights of a musiccomposer or lyricist Can be defeated by the producer of a cinematograph film in the manner laid down in provisos (b) and (c) of section 17 of the Act.

We are fortified in this view by the decision in Wallerstein v. Herbert (1867) Vol. 16, Law Times Reports 453, relied upon by Mr. Sachin Chaudhary where it was held that the music composed for reward by the plain-tiff in pursuance of his engagement to give effect to certain situations in the drama entitled "Lady Andley's Secret", which was to be put on the stage was not an independent composition but was merely an accessory to and a part and parcel of the drama and the plaintiff did not have any right in the music.

.....

41. Though the judgment was rendered Per Bench, Justice V.R. Krishna Iyer delivered a separate and supplementing footnote where he states thus:

A cinematograph is a felicitous blend, a beautiful totality, a constellation of stars, if I may use these lovely imageries to drive home my point, slurring over the rule against mixed metaphor. Cinema is more. than long strips of celluloid, more than miracles in photography, more than song, dance and dialogue and indeed, more than dramatic story, exciting plot, gripping situations and marvellous acting. But it is that ensemble which is the finished product of orchestrated performance by each of the several participants, although the components may, sometimes, in themselves be elegant entities. Copyright in a cinema film exists in law, but s. 13 (4) of the Act preserves the separate survival, in its individuality, of a copyright enjoyed by any 'work' notwithstanding its confluence in the film. This persistence of the aesthetic 'personality' of the intellectual property cannot cut down the copyright of the film qua film. The latter right is, as explained earlier in my learned brother's judgment, set out indubitably in s. 14(1)(c). True, the exclusive right, otherwise called copyright, in the case of a musical work extends to all the sub-rights spelt out in s. 14(1)(a). A harmonious construction of s. 14, which is the integral yoga of copyrights in creative works, takes us to the soul of the subject. The artist enjoys his copyright in the musical work, the film producer is the master of his combination of artistic pieces and the two can happily co-exist and need not conflict. What is the modus vivendi?

.....

The solution is simple. The film producer has the sole right to exercise what is his entitlement under s. 14(1)(c) qua film, but he cannot trench on the composer's copyright which he does only if the 'music' is performed or produced or reproduced separately, in violation of s. 14(1)(a). For instance, a film may be caused to be exhibited as a film but the pieces of music cannot be picked out of the sound track and played in the cinema or other theatre. To do that is the privilege of the composer and that right of his is not crowned in the film copyright except where there is special provision such as in s. 17, proviso (c). So, beyond exhibiting the film as a cinema show, if the producer plays the songs separately to attract an audience or for other reason, he infringes the composer's copyright. Anywhere, in a restaurant or aeroplane or radio station or cinema theatre, if a music is played, there comes into play the copyright of the composer or the Performing Arts Society. These are the boundaries of composite creations of art which are at once individual and collective, viewed from different angles. In 'a cosmic perspective, a thing of beauty has no boundary and is humanity's property but in the materialist plane on which artists thrive, private and exclusive estate in art subsists. Man, the noblest work of the Infinite Artist, strangely enough, battles for the finite products of his art and the secular law, operating on the temporal level, guardians material works possessing spiritual values. The enigmatic smile of Mona, Lisa is the timeless heritage of man-kind but, till liberated by the prescribed passage of time, the private copyright of the human maker says, 'hands off'.

.....

Therefore, copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful render-ing. It is the melody or harmony reduced to print, writing or graphic form. The Indian music lovers throng to listen and be enthralled or enchanted by the nada brahma, the sweet concord of sounds, the rags, the bhava, the lava and the sublime or exciting singing. Printed music is not the glamour or glory of it, by and large, although the content of the poem or the lyric or the song does have appeal. Strangely enough, 'author', as defined in s.2(d), in relation to a musical work, is only the composer and s. 16 confines 'copyright' to those works which are recognised by the Act. This means that the composer alone has copyright in a musical work. The singer has none. This disentitlement of the musician or group of musical artists to copy-right is un-Indian, because the major attraction which lends monetary value to a musical performance is not the music maker, so much as the musician. Perhaps, both deserve to be recognised by the copyright law. I make this observation only because act in one sense, depends on the ethos and the aesthetic best of a people; and while universal protection of intellectual and aesthetic property of creators of 'works' is an international obligation, each country in its law must protect such rights wherever originality is contributed. So viewed, apart from the music composer, the singer must be conferred a right. of course, law-making is the province of Parliament but the Court must communicate to the lawmaker such infirmities as exist in the law extant.

42. A sound recording is a conglomerate of various invaluable contributions. If one were to trace the evolution of what eventually comes to be known as a 'sound recording', it all commences with the melody that flows when the muse inspires, the reduction of the same to notation, fleshing out the melody with lyrics, leading to songs, then instrumentation and orchestral arrangements, in all, one complete 'felicitous blend'. Sometimes, melody is set to lyrics and other times, lyrics are set to fit within the contours of melody. A 'sound recording' incorporates both melodic as well as lyrical contents. The playback artists and accompanists then deliver the song which would be recorded in a studio and embodied as sound in a master medium on a master tape or digital media.

43. Irrespective of the medium of delivery, it is the sum-total of all the aforesaid elements that constitute a 'sound recording' and it is in respect of this 'sound recording' that the producer lays claim, accorded to him in terms of the statute. To this end, the submission that a 'sound recording' has always been covered as a subject under the Copyright Act, though referred to earlier as a 'record' is in order. However, the 2012 amendment makes it clear, by way of tightening the statutory protection extended to artists, that the right of exploitation of a 'work' shall, prospectively, be restricted only to the specific mode or medium of exploitation stipulated in the Assignment Agreement and none other.

44. The rights of the other stake holders including and specifically, the performer, are separate and entitled to protection. The right of the producer in the sound recording as a conglomerate unit does not militate against or compromise the rights of these individual constituents whose rights are identifiable, distinct and enforceable.

45. In my view, Section 17 is key to the adjudication of the lis before me. Section 17 vests the 'author' of a 'work' with the first ownership of copyright. There are six exclusions. Proviso (b) and (c) are relevant in the case of a music composer.

46. I have held earlier that Proviso (c) would not stand attracted in the facts and circumstances of the present case. This Proviso applies to situations not coming within clause (a) or (b) and states that in the case of a work made in the case of the authors' employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein. A suggestion was made by Echo that the facts of the present case would be covered by proviso (c) and there being no agreement to the contrary furnished by Mr. Ilaiyaraja, the employer shall be the first owner of the copyright therein. I reject this contention outright.

47. There is nothing to suggest an employer-employee relationship in this case vis-a-vis the music composer and the producer. The engagement of Mr. Ilaiyaraja, to my mind, is as a stand-alone professional, and his services, commissioned, as such. We have been privy to many situations where it is in fact, his music that has carried the movie. Otherwise eminently forgettable movies are made memorable by the outstanding musical scores that they contain. Though not a rule of thumb, the stature of the music composer before me dictates that that the arrangements as between himself and the producers are not one of service or apprenticeship but one of Principle to Principle.

48. Proviso (b) addresses a situation where an expert in his or her field has been engaged and certain 'works' commissioned. This proviso addresses the making of a cinematograph film that includes, by definition, a 'sound recording', of a 'musical work'. The producer of the 'cinematograph film' will, in the absence of any agreement to the contrary, be the first owner of the copyright therein including such 'sound recording'. It is this clause which, in my opinion, is applicable to the facts and circumstances of the present cases.

49. As stated earlier, it is unclear as to whether Mr. Ilaiyaraja has reserved his rights by way of agreements with the producers of the films. The producers are not before me to either confirm or deny this position. Mr. Ilaiyaraja also has not produced any documentation in support of this position. Though Agi Music states in its pleadings that it has seen fifty (50) such agreements out of a hundred and eighty five (185) agreements that form the subject matter of C.S. No. 187 of 2010, there is no evidence before me to support such a position in the present case. Moreover, the songs in the 259 agreements annexed to the written statement by Echo have been distributed in public domain, thanks to Echo, for the last several years. No objection has been raised by Mr. Ilaiyaraja till date of filing of the suit. If at all he was of the view that the exploitation of the 'sound recording' by Echo constituted an infringement, it was

incumbent upon him to have taken action in a timely fashion. This has not been done and the plaintiff does not even mention any communication to Echo or a cease and desist notice having been issued to Echo. By conduct, Mr. Ilaiyaraja appears to have acquiesced to the actions of Echo. I also draw no adverse inference from the fact that there are 41 agreements that have not been produced by Echo. The explanation offered is reasonable and acceptable and I do so.

50. No solution has been offered by learned counsel as to how the concurrent rights of the producers and individual constituents of the 'sound recording' could be allocated, but to my mind, the answer lies in Section 57 of the Act. Section 57 implements the provisions of Article 6 of the Berne Convention conferring upon an author 'Moral Rights' or 'Droit Moral' as distinguished from 'economic rights'. These special rights would subsist in a 'work' even after either full or partial assignment of the same and encompass claim to authorship of the work and the right to restrain or claim damages in respect of any distortion, mutilation, modification or any other act that would change the character of the said work, and that would be prejudicial to the honour or reputation of the author. Article 6 is extracted below:

Article 6 [Moral Rights: 1. To claim authorship; to object to certain modifications and other derogatory actions; 2. After the author's death; 3. Means of redress] (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation. (2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained. (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

51. Moral rights are essentially a European concept and find place for the first time in the 1928 Rome Convention. It was reiterated in the 1948 Brussels Convention and thereafter in the Stockholm Convention in June 1957 and Paris convention of 1971. In the United Kingdom, statutory recognition was given to moral rights in the U.K. Copyright Designs and Patents Act 1998, pursuant to the recommendation of the Witford Committee. The U.K. Act recognizes, under moral rights, the distinct right to be identified as the author of the work or in other words the right to paternity of the work, the right to object to derogatory treatment of the work or in other words the rights to insist on integrity of the work, right against false contribution of a work and the right to privacy in private photographs and films.

52. The special rights encompassed under Section 57 are thus of a nature that would protect the author beyond the contractual terms binding parties and no party could seek to negate or defeat such special rights relying on the terms of a contract of assignment.

53. Section 57 reads thus:

Author's special rights.— 1 [(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation,

modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation.— Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.] (2) The right conferred upon an author of a work by sub-section (1), may be exercised by the legal representatives of the author.

54. In my considered view, Section 57 bestows upon Mr. Ilaiyaraja, complete Moral rights over the 'musical works' authored by him. To elucidate, Mr. Ilaiyaraja is a 'composer' as defined in Section 2 (ffa) and thus, an 'author', as defined in Section 2 (d) of a 'musical work', as defined in Section 2 (p) of the Act. By virtue of such authorship, he is the 'first owner' of the copyright vesting in the 'musical work' in terms of Section 17. By application of the Special right under Section 57(1)(a), he continues to lay claim to the authorship of his 'musical works' despite the assignment of the same for the purposes of the 'sound recording'.

55. This entitles him, in terms of Section 57(1)(b), to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the work, if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. This is targeted to ensure that the purity and integrity of the 'musical work' is maintained by the assignee. To this end, Section 57(1)(b)) grants the author a right to restrain the exhibition of the 'sound recording' if it is found that the manner of presentation of the 'sound recording' would project the author's composition in negative light.

56. This clause, as it stood earlier extended this protection only during the life of a copyright. However, the 2012 amendment has deleted the phrase '*which is done before the expiration of the term of copyright*' in Section (1)(b), as a result that the protection and special entitlement now extends in infinitum, and can be exercised by an author of a 'work' or his legal heirs at any time without restriction of time or period. This, in my view, points to a serious and laudable attempt by Legislature to ensure maintenance of integrity and protection of creative works.

57. It also entitles the author, Mr. Ilaiyaraja, to the exclusive right under Section 14 to do or engage in, all of the acts set out in the sub-clauses of Section 14, barring situations where such entitlement encroaches upon the making of a 'sound recording' based on the concerned 'musical work'. I add this caveat for the reason that the 'musical works' in question have already found expression as 'sound recordings' and have been integrated in 'sound recordings' in various cinematograph films. It cannot hence be that further 'sound recordings' be made based on the same 'musical works'. This would defeat the purpose of vesting the 'sound recording' right in a producer, in the first place. To sum up, what has been assigned is the 'musical work' *qua* the 'sound recording' and the author continues to retain the right in the 'musical work' for all other intents and purposes, both moral as well as economic. The special right to exploit such 'musical work' otherwise is unfettered.

58. Though Special Rights have been part of the Act since inception and bring with its purview the concept of a moral right, the 2012 amendment has introduced the concept of 'Moral rights' in so many words, for the first time in the Indian Copyright Act, in Chapter VIII, Section 38 B addressing the moral rights of a performer. The Section states that the performer of a performance shall, independent of his right after assignment, either wholly or partially of his right, continue to have the right to claim to be identified as the performer of his performance except where the omission is

dictated by the manner of the use of the performance and to restrain or claim damages in respect of any distortion, mutilation or either modification that would be prejudicial to his reputation. To my mind, these rights are analogous to Section 57 that enumerates an author's Special Rights and supplemental thereof.

59. Much has been said on the 2012 amendments to the Copyright Act. Mr. Radhakrishnan, on behalf of Mr. Ilaiyaraja has advanced impassioned arguments on the unfair treatment meted out to music composers and artists in the past, thus, paving the way for the amendments in 2012, to provide for more equitable treatment to them. The Parliamentary Debates prior to the 2012 amendments, in regard to the amendments proposed in regard to musicians and music composers, is as follows:

COPYRIGHT (AMENDMENT) BILL

.....

SHRI KAPIL SIBAL: Apart from the cinema, there are other vehicles through which entertainment can reach millions and billions in the world.

Wherever you go in the world, the Indian Film Industry is popular there. Anywhere in the world, people remember our films. If it is Russia, people still remember the song sung by Shri Raj Kapoor - 'awara hoon'. If I go sometimes to the Eastern European countries, people are singing modern songs that are being sung in Hindi films today. The same situation is in Egypt. There is a huge market for Indian Film Industry in the United States of America, apart from the fact that this is given impetus to artists to produce artistic works of great excellence. It has also become a great business. With the change of technology, new avenues of business have arisen.

Madam, if you really look at the history of the copyright law, the first protection to the copyright law was given way back in 1709 by the Statute of Anne. It is very interesting to note that even the US Constitution has a specific provision on protection to copyright. It is because they realize the importance of intellectual property in the artistic works that emanate from citizens, who have those qualities.

The point that I was making is that this is something that needs to be protected. But, unfortunately, over the years - especially in the context of artists in India - the producers in this country through an assignment took over those rights. Under Section 13 (i)(a) of the Copyright Act, there is protection to the artistic work, whether it is a literary work, a musical work, dramatic work or a performance. So, protection is provided under the Act. So, the artist is the owner of that copyright because he creates that artistic work.

But, unfortunately, there was a provision in Section 17 (i)(b) of the Act under which it was said that the artistic work belongs to the owner, subject to a contract to the contrary. So, what used to happen is that if in a film, a song was to be sung, the producer of the film would go to the artist and say that you have assigned your rights to me unconditionally and you have assigned them forever.

The result was that under the Copyright Act, instead of the artist, the producer became the sole author of the copyright. The result of that was, he produced the film, the artist got the benefit of whatever he could get in the film but he sold those rights of which the producer became the owner through other medium. He sold it to music companies; he sold it to telecom companies; and he made all the profits. The result was that the poor author and the poor creator of the copyright did not get any share of the profit. According to me, this is a historic injustice to the creators.

There are about seven amendments but I am not going to deal with each section. But broadly one of the things which we wish to do is to ensure that the authors are the owners of the copyright and whereas the copyright can be assigned, the right to royalty cannot be assigned. This is the amendment that we are moving that you can get the assignment from the artist whether it is a music composer or a literary

composer but when it comes to payment of royalties through other mediums, then the producers and the authors must share that royalty in equal measure. So, this is the first amendment that I have brought and I am commending it to this House for adoption.

We have also consequentially brought about changes in the Copyright Societies because in the Copyright Societies all the producers control the Copyright Societies because the provision said that the owner of the copyright shall be in the management of the Society and because of Section 17(1)(b), the producer became the owner of the copyright. So, the authors were thrown out of the Copyright Societies and only the producers became owners of the copyright societies and they decided to negotiate with music companies and they decided to sell those works, especially Hindi songs which are famous throughout the world to music companies. They made a killing on them and the poor artist was left in the lurch.

The fact of the matter is that a time has come to correct all these things.

All over the world, there is equitable distribution of royalties. But unfortunately this is not what has been happening in India. Actually, I wanted to give this right to the principal director of films as well. Ultimately, in a film, who are the real artists? They are those who sing songs, those who perform, and those who direct the film. Now a Director is kept out of any profits of the film. He is the one who actually creates the architecture of the film. But unfortunately he does not share any part of the royalty because there is no risk capital involved. It is the producer who risks his capital. Though I made this recommendation to the Standing Committee that the principal director should also partake of the profit, the Standing Committee had thought in its wisdom that the time has not come for the principal director to be included and he too share in the profit of the business. So, I have, in fact, dropped those amendments and I have not pressed on them.

60. According to him, the very purpose of the 2012 amendments are to ensure the protection of the intellectual property of a composer, to see that the ownership as well as the right of exploitation thereof, remains within his possession and that of his legal heirs. He draws attention to the amendments to various section of the Act particularly, the proviso to Section 17 inserted in 2012, that states that in the case of any work incorporated in a cinematograph film nothing contained in clauses (b) and (c) shall affect the right of the author in the 'work' referred to in clause (a) of sub-section (1) of Section 13. He also draws attention to sub-Clause (e) inserted in Section 14 dealing specifically with sound recording and reading thus:

14. Meaning of copyright.-

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it including storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;

(iii) to communicate the sound recording to the public.

61. A combined reading of the aforesaid makes it clear, according to him, that after the amendment of 2012 it is the composer in whom vests the full ownership and right of exploitation of his 'musical works' including that of a 'sound recording' based on his musical work. At first blush, it is an extremely attractive argument and one that I am sorely tempted to accept. We, as a society, have not been kind to our creators and geniuses. The tendency is to place them on a pedestal and revere them while they are in their prime, while, simultaneously and ironically, finding every method possible to exploit their work to generate profits for corporate interests, to their exclusion. Many of India's finest Artists thus languish in their old age, without any means of accessing the fruit of their labour. This is a deplorable situation and a clarion call for remedy.

62. The amendments to the Copyright Act in 2012 are an attempt to redress this, in some measure, in balance with the rights of other entities as well. The producer of a cinematograph film is the brain behind the film, undertaking the risk and responsibility of the venture. It is in recognition of the enormous risk taken by the producer that statute vests in him the copyright in the entire film as well as the 'sound recordings' that constitute an intrinsic and integral part of the film. This position, in my view, has not been tampered with or altered by the 2012 amendment. The protection afforded to the author of the 'musical works' is by insertion of the clauses as we have seen above, as well as the three provisos after Section 18(1) dealing with assignment of copy right, and the amendment effected to Section 19(3).

63. The first proviso to Section 18(1) states that an assignment made shall apply solely to the exploitation of such work upon such medium or mode of exploitation in existence or in commercial use at the time when such assignment was made or if such assignment specifically referred to such medium or mode of exploitation. The second proviso states that the author of a literary or musical work, included in a cinematograph film, shall not assign or waive the right to receive royalty, to be shared on an equal basis with the assignee of the copy right for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the author or a copyright society for collection and distribution. The third proviso is similar to the second proviso, except that it deals with literary or musical work included in a 'sound recording', but not forming part of a cinematograph film.

64. Provisos 2 and 3 thrust royalties upon the authors of 'musical works'. This serves, in my view, to address concerns that established production houses negotiate unfairly with a music composer, bearing in mind the unequal status of the two parties. By the insertion of the aforesaid provisos, the right to equal royalty in the 'sound recording' is ensured. Section 19(3) also stands amended along similar lines. Whereas the section earlier provided for the assignment agreement to specify *'the amount of royalty payable, if any'*, it now provides that the assignment agreements *'shall specify the amount of royalty and other consideration payable to the author or his legal heirs during the currency of the agreement'*, thus making the payment of royalty, mandatory.

65. In summation, the 2012 amendment does take into account the interests of authors of 'musical works' by ensuring the payment of equal royalty to them and legal heirs, and not by shifting the basis of ownership of copy right as it exists presently.

66. In the light of the discussion as aforesaid and a concurrent reading of the statutory provisions, I answer the issues in this category stating that (i) it is the Producer of the cinematograph films who holds the copyright, by default, in respect of the 'sound recordings' that the film contains and an inference otherwise would arise only if the author of the 'musical work' produces evidence of reservation of his right to such 'sound recording' and (ii) Mr. Ilaiyaraja holds complete Special and Moral rights in regard to the 'musical works' composed/created by him entitling him to the protection afforded under Section 57 of the Act, being claim to authorship of his work, all measures necessary to preserve the integrity and purity of his work, honour and reputation and the right of exploitation of his 'musical works' in any manner as he may desire, only barring in the form of the 'sound recordings' that already stand integrated in the cinematograph films. This category of issues is answered accordingly.

67. The second set of issues relate to the question of assignment of copyright of Mr. Ilaiyaraja to his wife Mrs. Jeevaraja and subsequent licences issued by her vide documents executed by her in 2007 being the SRLA and the SPA and the Addendum executed in January 2010. Having held that Echo is the legal owner of the 'sound recording' the resultant conclusion would be that the assignment of the copyright to

Mrs. Jeevaraja would have no statutory sanction. The entire transaction as regards Agi Music would thus fail at the threshold. However, if at all any party could have questioned the assignment of the 'sound recording' right to Agi Music, it is Echo. Echo has chosen to remain silent notwithstanding the evident exploitation of the 'sound recording' right by Agi Music between 2007 and 2012. Echo has thus, in my view, acquiesced to the assignment of the sound recording right to Mrs. Jeevaraja and the subsequent exclusive assignment of the right to Agi Music. Even in the pleadings as well as arguments before me now Echo does not very seriously question the right granted to Agi Music, merely stating that it is the legal owner of the 'sound recordings'. I thus, disconnect the sets of facts, the lis as between Mr. Ilaiyaraja and Echo and the lis between Mr. Ilaiyaraj and Agi Music for the purposes of present proceedings and answer the two sets of issues separately.

68. The second set of issues are as follows.

C.S. No. 308 of 2013:

1. Has the 1st Defendant assigned his copyright in relation to the songs which are the subject matter of this Suit to his wife vide Assignment Agreement dated 24.11.2007 and if so, what is the period of assignment?
2. Did the 1st defendant's wife (as an assignee of the 1st Defendant) and the Plaintiff enter into a Sound Recording Licensing Agreement ("SRLA") dated 24.11.2007 and if so what was the period of such Agreement?
3. Does Section 19(5) of the Copyrights Act apply to the present facts?
4. Is this a fit case to read in an implied term into the Assignment Agreement in relation to the term of the Agreement?

C.S. No. 625 of 2014:

10. Did the plaintiff's wife (as an assignee of the plaintiff) and the 4th defendant enter into a Sound Recording Licensing Agreement ("SRLA") dated 24.11.2007 and if so what was the period of such Agreement?

11. Does Section 19(5) of the Copyrights Act apply to the present facts.

Additional Issue:

'Is Mrs. Jeevaraja is an agent of Mr. Ilaiyaraja for the purposes of the transaction between herself and Agi Music'.

69. Mr. Ilaiyaraja does not dispute the Assignment Agreement dated 24.11.2007 extracted below for the sake of completion of narration:

ASSIGNMENT OF COPYRIGHT AND SOUND RECORDING RIGHTS

KNOW ALL MEN BY THESE PRESENTS, the undersigned assignor,

Name: ILAIYARAAJA

Address: 38, MURUGESAN STREET, T NAGAR

City: CHENNAI

STATE: TAMIL NADU, ZIP: 600017, Country: INDIA

Does hereby assign, transfer and se over to the assignee (wife of the assignor)

Name: JEEVARAJA

Address: 38, MURUGESAN STREET, T NAGAR

City: CHENNAI

STATE: TAMIL NADU, ZIP: 600017, Country: INDIA

Hereby, the assignor as the copyright owner and sound recording rights owner, assigns all of his rights including sound recording rights, publishing rights, public performances rights, digital media rights, new media rights, caller tunes, ring tones rights, true tones rights, all titles and interest in and to the musical compositions listed in Exhibit A, composed, produced and arranged by ILAIYARAAJA aka ILAIYARAJA ka ILAIYARAJA together with any and all assignor's existing

copyright therein throughout the India and the World, and any and all assignor's rights of every kind, nature or description attaching to or which may attach to said musical composition and/or embraces or included in the copyright thereof in the India and entire world, which said composition the undersigned was originally assigned on 24th November 2007.

IN WITNESS WHEREOF, the undersigned has executed the foregoing instrument on this 24th November 2007.

70. This issue thus, stands settled stating that the Assignment to Mrs. Jeevaraja for the purposes of the present proceedings, is valid. The second aspect is the tenure of the Assignment Agreement and the applicability of Sections 18 and 19(5) of the Act to the same. Section 18 refers to the assignment of copyright and Section 19 of the Act refers to the mode of assignment. The relevant provisions are extracted below:

18. Assignment of copyright- (1) 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;

Provided that in the case of the assignment of copyright in any further work, the assignment shall take effect only when the work comes into existence:

[Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation or the work:

Provided also that the author or the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization 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.)

19. Mode of assignment.-- [(1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized agent

[[(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of [royalty and any other consideration payable], to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such right shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five

years from the date of assignment.

71. In the present case though SRLA and the SPA are effective for a period of ten years, the assignment agreement is silent in regard to its tenure. According to Agi Music, the tenure of the assignment agreement has to be seen in the context of the entire transaction inter se the parties, and includes the interpretation of all the agreements as a whole. Thus, and as a consequence, the Assignment Agreement should also be seen as having the same tenure of ten years as the SRLA and SPA. Per contra Mr. Ilayaraja would urge that Section 19(5) is clear in stating that if the agreement of assignment is silent as to tenure it should be deemed to be of five years only.

72. No doubt, a transaction as between the parties is to be taken in a holistic fashion. That the Assignment should be seen in a purposive fashion in cohesion with the rest of a transaction and not in isolation finds support in the decision of the Division Bench of the Delhi High Court in the case of *Dorling Kindersley* (supra). The Bench held that the provisions of Section 19(5) are not to be interpreted mechanically but should be seen in context of the transaction, in entirety.

73. However, the parties in the present case have entered into all agreements on the same date, mentioning the tenure thereof in two of the agreements. The absence of a mention of tenure in the assignment agreement cannot thus, in my view, be by omission or oversight. If the assignor, Mr. Ilayaraja, had intended that the assignment be for ten years then he would have stated so. I cannot persuade myself to accept the argument that the tenure should be accepted as ten (10) years merely by implication and assumption. This is all the more the reason that the parties to the Assignment Agreement on the one hand, and those who entered into the SRLA and SPA are not identical. One cannot thus, impute the same motives and compulsions to all the parties and thrust a longer period of assignment upon the assignor.

74. Agi Music would argue that the royalties were remitted directly to the account of Mr. Ilayaraja and thus the identity of the parties being different would not matter or be relevant. I disagree. The mere fact that the royalties were being received by Mr. Ilayaraja is no justification to bypass the statutory prescription of Section 19(5). In any event, the payments of royalty have admittedly been only for the period 2007 to 2012. The provisions of Section 19(5) are mandatory, applicable as a norm. Any variation thereto would have to be the exception, and such exception is liable to be proved not merely by implication but conclusively. This is for the reason that the purpose of the prescription in Section 19 is the protection of rights of the assignor and this assumes paramount importance. My conclusion is thus that the term of the assignment agreement is governed by the provisions of Section 19(5) of the Act and is five years only.

75. The third set of issues are:

C.S. No. 625 of 2014:

5. Whether the plaintiff is entitled to any relief against the 2nd defendant in view of the agreement entered into between the 2nd defendant and the various producers of the movies mentioned in "Annexure 1" of the Written Statement?

6. Whether the 2nd defendant is entitled to exploit the rights over the "sound recordings" with regard to songs/music of the movies mentioned in "Annexure 1" of the Written Statement?

7. Whether the Suit is liable for misjoinder of parties and whether the plaint discloses any nexus between the defendants?

8. Whether the agreement between the plaintiff and his wife and consequently the agreement between the plaintiff's wife and the 4th defendant is valid in the eye of law?

9. Has the plaintiff assigned his copyright in relation to the songs which are

the subject matter of this suit to his wife vide Assignment Agreement dated 24.11.2007 and if so, what is the period of assignment?

12. Has the plaintiff breached the terms of the Assignment Agreement dated 24.11.2007 and/or SRLA?

13. Has the 4th defendant infringed the copyright of the plaintiff?

14. To what other reliefs, the parties are entitled to?

C.S. No. 308 of 2013:

5. Has the 1st Defendant breached the terms of the Assignment Agreement dated 24.11.2007 and/or SRLA?

6. Has the 2nd Defendant infringed the copyright which was exclusively granted by the 1st Defendant's wife to the Plaintiff?

7. Should the 2nd Defendant be restrained from breaching the negative covenant contained in Clause 2 of the SRLA?

8. Is the Plaintiff entitled to the reliefs sought for?

76. My answers to the third set of issues are in seriatim below and may be read along with my conclusions in the first and second set of the issues as well, paragraphs 23 to 65 and paragraphs 67 to 72.

77. There is no discrepancy with regard to the array of parties and the suit is held to be maintainable.

78. As regards the SRLA between Mr. Ilaiyaraja and Agi Music and the interpretation thereof, nothing survives therein in the light of my conclusions to issues (1), (3), (4) and (11) in the second set of issues above. Consequently, issues (8), (9), (12) and (7) are answered accordingly.

79. As regards the entitlement to relief as against Echo as well as Agi Music, Mr. Ilaiyaraja has reserved his right to claim damages for infringing his copyright, accounting and other reliefs under the copyright law and other provisions of general law in A. No. 7701 of 2014. This Application has been allowed by the learned Single Judge on 03.03.2015 and this order has not been disturbed in intra court appeal. Thus, the reservation to sue is reiterated, to be exercised by Mr. Ilaiyaraja, in accordance with law.

80. Only those decisions as are relevant to the issued discussed by me have been referred to in the course of the discussions above and not all decisions as cited by the parties.

81. My conclusions in regard to the issues that arise in each suit are as follows:

C.S. No. 625 of 2014:

(i) The second defendant, Echo, has obtained rights in regard to the 'sound recordings' comprised in the films covered under the Agreements in Annexure 1 to its written statement and is entitled to exploit the same, specifically and strictly in the form and manner as contained in the respective cinematograph films only.

(ii) The plaintiff is entitled to Special, Moral rights in regard to the 'musical works' composed by him upon which the 'sound recordings' in question are based, in line with Section 57 of the Copyright Act. This entitles him to claim authorship of his work, take all measures necessary to preserve the integrity and purity of his work, honour and reputation and exploit such 'musical works' in any manner as he may desire, only barring in the form of the connected sound recordings that are an integral part of the cinematograph films, for which Copyright is held by the respective producers of the films.

(iii) The plaintiff has reserved his right to initiate proceedings for damages and other monetary reliefs as against the respondents in Application No. 7701 of 2014, which application was allowed on 03.03.2015. In the light of the said

reservation, the right of the plaintiff to urge reliefs as reserved, in accordance with law, is reiterated.

C.S. No. 625 of 2014 is decreed in the aforesaid terms. In the light of the facts and circumstances of the case and the discussion as noted above, there will be no order as to costs.

C.S. No. 308 of 2013:

- (i) The Assignment Agreement and Sound Recording Licensing Agreement, both dated 24.11.2007, are valid.
- (ii) The period of the Assignment Agreement is five years and the provisions of Section 19(5) of the Copyright Act 1957 apply to the present facts.
- (iii) Consequently no implied term may be read into the assignment extending its term beyond the period stipulated under the statute.
- (iv) Mrs. Jeevaraja is not an agent of Mr. Ilaiyaraja and is only an assignee.
- (v) There is no breach of the negative covenant contained in Clause 2 of the SRLA, or any other terms thereof, by the first defendant.

C.S. No. 308 of 2013 is dismissed. There shall be no order as to costs.

82. The Maestro, Mr. Ilaiyaraja, strode the music world like a colossus, incorporating several novel elements from folk tunes as well as western sensibilities, merging notes, words, feelings and emotions, seamlessly. To the thousands of his admirers, the author of this judgement included, the music of the Maestro was simply, sheer magic. It dissolved barriers, made the incomplete, complete and the world an infinitesimally better place to be in. Nowhere is this more apparent than from the fact that all counsels who argued the matters, though divided in their interpretation of the law, were united in their adulation of his music.

83. My sincere appreciation to the assistance rendered by Mr. Perumbulavil Radhakrishnan, Mr. Satish Kumar and Mr. Aniruddh Krishnan.

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