

\$~27

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Decided on: 28th February, 2020

+ CS(COMM) 594/2016

SUPER CASSETTES INDUSTRIES PVT LTD Plaintiff
Through: Mr. K.K. Khetan, Advocate.

versus

PRIME CABLE NETWORK AND ANR Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

1. The plaintiff herein, Super Cassettes Industries Private Limited, is *inter alia* in the business of production and marketing of music cassettes, compact discs ["CD"], etc., as also film production and distribution. It claims to be the owner of a large number of copyrights in music and literary works, films and sound recordings, including approximately 20,000 Hindi film songs and non-film songs, and around 50,000 songs in regional languages.

2. The business of the plaintiff is carried on *inter alia* through licenses to various organizations such as FM Radio Stations, Television Broadcasters, Multi-System Operators ["MSO"] and/or Cable Television Operators etc., for the use of its copyrighted works.

3. In this suit, the plaintiff alleges infringement of its copyright by the defendants, Prime Cable Network ["PCN"]. One Ajay Malik was

originally named as the proprietor of PCN and arrayed as defendant no. 2. By an order dated 17.05.2016 passed by the Joint Registrar, Ajay Malik was deleted from the array of parties and one Sanjay Agarwal was subsequently impleaded as defendant no. 2.

4. The case made out in the plaint is that PCN carries on business as an MSO under the logo "PRIME TIME" and "PRIME DIGITAL". It is stated to be a large provider of ground cable network services in the State of Uttarakhand. The plaintiff's case is that PCN broadcasts and/or communicates the plaintiff's copyrighted sound recordings, the underlying lyrics, musical composition and the audio - visual works, to the public through its cable network. The plaintiff has specifically averred that PCN has not taken a license from it for this purpose, despite the plaintiff having alerted PCN to its licensing scheme. The plaintiff claims to have addressed a legal notice dated 21.07.2014, requesting PCN to obtain a license from the plaintiff, but to no avail.

5. An affidavit of an investigator, Mr.Arun Kumar was included with the plaint which, according to the plaintiff, shows significant use of the plaintiff's copyrighted material by PCN. The plaintiff has also placed on record a CD of PCN's broadcast, which confirms this position.

6. In these circumstances, the plaintiff claims infringement of its exclusive rights under various provisions of the Copyright Act, 1957 [hereinafter, "the Act"], and seeks an injunction as well as damages against the defendants. According to the plaintiff, the plaintiff has suffered losses of not just the amount of license fee, but also an erosion in the value and ability to exploit its investments. The plaint

does not reveal the exact number of subscribers of PCN, but does state that it has "thousands of connections".

7. The plaintiff has instituted the present suit for the following reliefs:-

"37. The Plaintiff prays that this Hon'ble Court may be pleased to grant the following reliefs:

(i) An order of permanent injunction restraining the Defendants, their officers, servants, agents and representatives and all others acting for and on their behalf from either engaging in themselves or from authorizing, the recording, distributing, broadcasting, public performance / communication to the public or in any other way exploiting the cinematograph films, sound recordings and /or literary works (lyrics) and Musical works (musical composition) or other work or part thereof, that is owned by the Plaintiff including all works whereon the Plaintiff has shown its copyright under section 52A of the Copyright Act or doing any other act that would lead to infringement of the Plaintiffs copyright;

(ii) An order for rendition of accounts of profits directly or indirectly earned by the Defendants from their infringing activities and unlawful conduct, and a decree for the amount so found due to be passed in favour of the Plaintiff;

(iii) An order of delivery up to the Plaintiff or its authorized representative by the Defendants of all infringing tapes, copies and negatives, etc bearing the copyrighted materials of the Plaintiff;

(iv) An order requiring the Defendants to pay to the Plaintiff damages to the tune of Rs. 25,00,000/- towards past damages and further grant future damages along with pendente lite and future interest at the rate of 18% p.a. till the time the decretal amount is paid;

(v) An order awarding the costs of the present suit to the Plaintiff;

AND

Any further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of this case."

8. The suit was first listed on 13.10.2014, when summons were issued and an *ex parte ad interim* order was granted in favour of the plaintiff in the following terms: -

"11. Accordingly, the defendants, its officers, servants, agents and representatives are restrained from communicating the recordings to the public, distributing, broadcasting, public performance/communication to the public or in any other way exploiting the cinematograph films, sound recordings and/or literary works (lyrics) and musical works (musical composition) or other works or parts thereof that are owned by the plaintiff including all works whereon the plaintiff has shown its copyright under Section 52A of the Copyright Act or from doing any other act that would lead to infringement of the plaintiffs copyright, through its Ground Cable Network."

The *ex parte ad interim* order granted in favour of the plaintiff on 13.10.2014, was made absolute on 18.12.2019.

9. The orders of the Joint Registrar dated 21.01.2015 and 06.03.2017 record service of summons on PCN. Service on defendant no. 2 [impleaded by order dated 09.09.2016], by way of publication, was permitted by the Joint Registrar on 04.09.2017. However, despite service, the defendants did not enter appearance and the right to file a written statement on behalf of PCN and on behalf of defendant no. 2 was closed [vide orders of the Joint Registrar dated 22.08.2017 and 28.11.2017 respectively]. No appearance on behalf of the defendants

having been entered, the plaintiff was directed to lead its evidence by order dated 12.03.2018.

10. The plaintiff led the evidence of two witnesses, Mr. S.K. Dutta [PW-1] and Mr. Sunil Puri [PW-2]. They filed affidavits of evidence dated 18.04.2018 [Ex. PW1/A] and 01.08.2018 [PW2/X], respectively. The witnesses were produced for recording of their evidence on 25.04.2019 and 06.12.2019, respectively. The documents mentioned in their affidavits of evidence were tendered as Ex. PW 1/1 to PW 1/11 and PW 2/1 to PW 2/2.

11. As far as the jurisdiction of this Court is concerned, the plaintiff has invoked the provisions of Section 62(2) of the Act. As required by the judgments of the Supreme Court in *Indian Performing Rights Society Ltd. vs. Sanjay Dalia & Anr.* (2015) 10 SCC 161 and of this Court in *Ultra Homes Construction Pvt. Ltd. vs. Purrushottam Kumar Chaubey & Ors.* 2016 SCC OnLine Del 376 [FAO(OS) 494/2015, decided on 20.01.2016], Mr. K. K. Khetan, learned counsel for the plaintiff, confirms that the plaintiff does not have an office within the jurisdiction where PCN is located, or within the jurisdiction where it serves its customers. I am therefore satisfied that this Court has jurisdiction to entertain this suit.

12. Mr. K.K. Khetan, learned counsel for the plaintiff, submits that the evidence placed on record has established the case made out in the plaint. However, he limits the quantum of damages sought by the plaintiff to ₹8.1 lakhs, on the basis of paragraph 47 of the affidavit of evidence on behalf of PW-1. Mr. Khetan draws my attention to several orders and judgments passed by this Court, whereby the plaintiff has

been granted injunctive relief as well as damages, in similar facts and circumstances. These include the judgment dated 07.02.2018 in CS (Comm) 273/2018 [*Super Cassettes Industries Pvt. Ltd. vs. Home Cable Network Pvt. Ltd.*], judgment dated 02.04.2018 in CS (Comm) 1161/2016 [*Super Cassettes Industries Pvt. Ltd. vs. Good Media News Pvt. Ltd.*] and judgment dated 06.08.2018 in CS (Comm) 14/2015 [*Super Cassettes Industries Pvt. Ltd. vs. Sky Vision Digital Cable Network*].

13. In view of the unrebutted evidence led by the plaintiff, I am of the view that the plaintiff is entitled to the relief sought.

14. In the course of evidence, PW-1 proved the copyright certificates in favour of the plaintiff for the songs “*Munni Badnam Hui*” and “*Mit Jaye Ghamb*”[Ex. PW 1/8 and Ex. PW 1/9, respectively] and the assignment deed of the film “*Dabangg*” [Ex. PW 1/10]. The legal notice dated date 21.07.2014 was also proved as PW 1/11. With regard to the quantification of damages, the affidavit of evidence of PW-1 states as follows: -

“44. I am advised to say that the Plaintiff is entitled to the following:

- (a) *Compensatory Damages;*
- (b) *Exemplary damages;*
- (c) *Conversion damages;*
- (d) *Costs of the Proceedings.*

45. I am further advised to say that as regard the grant of compensatory damages to the Plaintiff, the following variables are necessary, namely:-

- (a) *The period over which the infringing activity was being performed by the Defendant;*
- (b) *The rate of the Plaintiff for cable operator license on monthly basis per connection;*

(c) The number of connections that the Defendant has;
(d) The notion that for every subscriber that the Defendant has, the Plaintiff has lost the account and hence suffered a damage.

46. I say that, it is known that the Defendant in the present suit has 15,000 subscriptions as on date as per the information and knowledge collected by the investigator after surveying the area.

47. I say that the subscription rate of the Plaintiff per account is charged at INR 18 per month. Therefore, I further state that the losses for the approximate period of Three (03) months. In order to avoid any controversy the plaintiff is taking the number of connections for the purposes of damages as 15,000 subscriptions:

$15,000 \text{ (Subscriptions)} \times 18 \text{ (Per month license fee)} \times 03 \text{ (No of months)} = \text{INR } 8,10,000/-$
(Eight Lakhs Ten Thousand Only).

48. I am advised to say that Section 58 of the Copyright Act, 1957, entitles the Plaintiff to conversion damages which would be the entire cost of the subscription. Therefore, I say that typically, the cost of a subscription channel would roughly be several hundred rupees, for example INR 700 per month for Tata Sky, INR 400 per month for Hathway Connections etc. Thus, I am advised to say that, if the conversion charges are to be granted by this Hon'ble Court, then the aforesaid figure would approximately rise to $500 \times 15,000 = \text{INR } 75,00,000/-$
(Rupees Seventy Five Lakhs Only)."

15. PW-2 was the co-investigator who had accompanied Mr. Arun Kumar, the main investigator who made recordings of the infringing material. He gave evidence as to the CD/DVD recordings and details of the films/music broadcast by the defendants in violation of the plaintiff's copyright. The evidence in this regard was exhibited as Ex.

PW 1/4 to Ex. PW 1/7, through the evidence of PW-1, which was reiterated by PW-2.

16. The exhibited documents include the CD/DVD recordings and the cue sheet thereof, as well as the screenshots of the defendant's broadcast [Ex. PW 1/4 to Ex. 1/7]. The documents clearly establish the plaintiff's case of infringement by the defendants. The plaintiff's statement that the defendants have not obtained any license from the plaintiff is also unchallenged. It is therefore held that the defendants have infringed the plaintiff's rights under Sections 14(a)(iii), 14(a)(iv), 14(d)(iii) and 14(e)(iii) read with Section 51 of the Act. The plaintiff's evidence regarding quantification of damages to the extent of loss of license fee of ₹ 8.1 lakhs is also unrebutted.

17. A decree of permanent injunction is granted against the defendant and in favour of the plaintiff in terms of paragraph 37(i) of the plaint. The suit is also decreed in the sum of ₹ 8.1 lakhs in favour of the plaintiff and against the defendants.

18. The plaintiff is also entitled to actual costs in the suit including court fees and counsel fees. The plaintiff will file an affidavit in this regard within one week.

19. The decree sheet be prepared accordingly.

20. The suit and pending application(s) stand disposed of in these terms.

PRATEEK JALAN, J.

FEBRUARY 28, 2020/ 'gg' /s