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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1742/2009

SUPER CASSETTES INDUSTRIES Plaintiff

Through Ms Geetanjali Visvanathan and
Ms. Ayushi Kiran, Advocates

versus

M/S. RACHANA TELEVISION PVT. LTD. Defendant

Through None

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Date of Decision: 13th May, 2013

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction for infringement of copyright, damages, delivery up etc. The prayer clause in the plaint is reproduced hereinbelow:-

“36. (i) An order of permanent injunction restraining the Defendant, its officers, servants, agents and representatives and all others acting for and on their behalf from recording, distributing, broadcasting or otherwise publishing or in any other way exploiting any films, sound recordings, music, lyrics in the Plaintiff's repertoire or doing any other act that would lead to infringement of the Plaintiff's copyright;

(ii) An order for rendition of accounts of profits directly or indirectly earned by the Defendant from the infringing activities and 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 Defendant of all infringing tapes, copies and negatives, etc bearing the copyrighted materials of the Plaintiff;

(iv) An order requiring the Defendant to pay to the Plaintiff damages as stated hereinabove.

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

2. Learned counsel for the plaintiff fairly states that she does not wish to press prayers (ii) and (iii) of the plaint. The aforesaid statement is accepted by this Court and plaintiff is held bound by the same.

3. It is the plaintiff's case that it is one of the most reputed music companies in the country and is the owner of a large repertoire of copyrighted works, including audio visual works, sound recordings and underlying musical and literary works.

4. It is stated that one of the important aspects of the plaintiff's business is to give licences to various organizations such as Broadcasting Organizations, Television Channels, FM Radio Stations etc. for the use of its copyrighted works. It is further stated that some of the television news channels that have entered into licence agreements with the plaintiff include, Aaj Tak, Headlines Today, Tez, CNN IBN, IBN 7, CNBC-TV-18, NDTV INDIA, NDTV 24 x 7, Times Now etc.

5. The defendant, M/s. Rachana Television Private Limited, a Hyderabad based company, owns and runs a Telugu news channel by the name of “NTV”. It is stated by learned counsel for the plaintiff that like any other channel the defendant makes extensive use of Hindi songs and film extracts.

6. In the plaint it is stated that in April, 2009 in the course of random monitoring of the defendant’s broadcasts, the plaintiff company came to know about unauthorised and unlicensed use of its copyrighted works on the defendant’s channel.

7. It is the plaintiff’s case that on coming to know of the said infringement, it initially made efforts to resolve the matter amicably with the defendant. However, it is stated that the negotiations ended in a failure as defendant neither obtained a licence nor stopped broadcast of plaintiff’s content on its channel.

8. Thereafter the plaintiff sent a legal notice dated 15th July, 2009 requesting the defendant to cease and desist from making such infringing broadcast and to pay the requisite licence fee.

9. It is stated that the the defendant in its reply dated 30th July, 2009 denied all the plaintiff’s averments including the factum of negotiation and broadcasts.

10. As despite a rejoinder, defendant’s infringing acts still continued, the plaintiff filed the present suit.

11. Upon the present suit being filed, this Court on 15th September, 2009 passed an ad interim ex parte injunction order restraining the defendant from either engaging in themselves, or from communicating to the public or broadcasting or otherwise publishing or in any manner exploiting any films

or sound recordings or literary works (lyrics) or Musical works (musical composition) or other works or a part thereof that is owned by the Plaintiff, or doing any other act that would lead to infringement of the plaintiff's copyrights.

12. On 21st January, 2011, since none appeared for the defendant, it was proceeded ex parte.

13. Subsequently, the plaintiff led evidence by way of affidavit and duly proved the e-mails dated 27th April, 2009, 5th May, 2009 along with draft of licence agreement dated 14th May, 2009, 20th May, 2009, legal notice dated 15th July, 2009, defendant's reply dated 30th July, 2009 and plaintiff's rejoinder to the reply dated 20th August, 2009. Plaintiff's witnesses have also proved cue sheet identifying specific instances of infringement by the defendant during the period 14th April, 2009 to 18th April, 2009 as well as sample Assignment Deeds which illustrate that the plaintiff company is the exclusive copyright owner of the said works.

14. Mr. Deepak Kamlesh Pania, PW-2 has proved the cue sheet filed with his affidavit dated 28th June, 2011 as well as CD of the infringing broadcast by the defendant for the period 14th April, 2009 to 18th April, 2009 and 1st June, 2009 to 30th June, 2009 and 1st July, 2009 to 9th July, 2009.

15. Having heard learned counsel for the plaintiff and having perused the ex parte evidence as well as documents placed on record, this Court is of the opinion that plaintiff has proved the facts stated in the plaint and has also exhibited the relevant documents in support of its case. Since the plaintiff's evidence has gone un rebutted, said evidence is accepted as true and correct.

16. This Court is further of the opinion that defendant has infringed the plaintiff's rights under Sections 14(a)(iii), 14a(iv), 14(d)(iii) and 14(e)(iii)

read with Section 51 of the Copyright Act, 1957 and consequently, plaintiff is entitled to remedies as provided under Section 55 of the Copyright Act, 1957.

17. The defendant has deliberately stayed away from this Court proceeding with a view to frustrate the plaintiff's claim of damages. The said act is unjustified. This Court is also in agreement with the submission of learned counsel for plaintiff that defendant's illegal activities have a cascading effect and set a bad example for other licencees of the plaintiff. Consequently, the plaintiff is also held entitled to punitive damages against the defendants for failing to appear and evading the necessity to present accounts.

18. In fact, in ***Microsoft Corporation Vs. Mr. Kiran and Anr., 2007 (35) PTC 748 (Del.)*** this Court has held as under:-

“the defendants have willfully, intentionally and flagrantly violated the copyrights and trade mark of the plaintiff. The defendants' have disregarded the plaintiff's rights and have caused "deliberate and calculated" infringement of copyrights and trademark of the plaintiff. Thus, I am inclined to grant damages to the plaintiff. In the suit damages claimed are Rs. 5 lacs, though the total damages would work out to be much more. Therefore, I have no option but to limit the claim of the plaintiff to Rs. 5 lacs.”

19. In ***ITC Ltd. Vs. Mr. Sunil and Ors., MIPR 2007 (2) 152*** this Court has held as under:-

“.....damages ought to be awarded against defendants who choose to stay away from proceedings of the Court and they should not be permitted to enjoy the benefits of evasion of court proceedings.”

20. Also, in the case of ***Times Incorporated Vs. Lokesh Srivastava and Ors., 2005 (3) PTC 3 Del*** this Court has held as under:-

“Thwart of compensatory damages to a plaintiff is aimed at compensating him for the loss suffered by him whereas punitive damages are aimed at deterring a wrong doer and the like minded from indulging in such unlawful activities. Whenever an action has criminal propensity also the punitive damages are clearly called for so that the tendency to violate the laws and infringe the rights of others with a view to make money is curbed. The punitive damages are founded on the philosophy of corrective justice ad as such, in appropriate cases these must be awarded to give a signal to the wrong doers that law does not take a breach merely as a matter between rival parties but feels concerned about those also who are not party to the list but suffer on account of the breach. In the case in hand itself, it is not only the plaintiff, who has suffered on account of the infringement of its trade mark and Magazine design but a large number of readers of the defendants' Magazine 'TIME ASIA SANSKARAN' also have suffered by purchasing the defendants' Magazines under an impression that the same are from the reputed publishing house of the plaintiff company. This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trade marks, copy rights, patents etc. should not only grant compensatory damages but award punitive damages also with a view to discouragend dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them.....”

.....This Court is of the view that the punitive damages should be really punitive and not flee bite and quantum thereof should depend upon the flagrancy of infringement.....”

21. Consequently, present suit is decreed in accordance with para 36(i) as well as costs assessed at Rs.50,000/-. The plaintiff is also held entitled to compensatory damages of Rs.2,00,000/- and punitive damages of Rs.3,00,000/-. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

MAY 13, 2013

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