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

% Date of Decision 31.10.2017

+ CS(COMM) 476/2016 & IA No. 13781/2014

SUPER CASSETTES INDUSTRIES PVT LTD Plaintiff

Through Mr.Pravin Anand, Ms.Prachi Agarwal
and Ms.Mrinali Menon, Advs.

versus

HALDWANI DIGITAL SERVICES PVT LTD Defendant

Through defendant is ex parte

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This suit is filed by the plaintiff seeking a decree of permanent injunction to restrain the defendant, etc. from engaging themselves or from authorising in recording, distributing, broadcasting, public performance/communication to the public or in any other way exploiting the cinematograph films, sound recordings, etc. that is owned by the plaintiff including all works whereon the plaintiff has shown its copyright under Section 52A of the Copyright Act. Other connected reliefs including the relief for rendition of account, etc. have also been sought.

2. Since defendant did not enter appearance despite service, it was proceeded ex parte vide order dated 17.08.2015.

3. It is the plaintiff's case that it is one of the largest and most reputed music companies in the country and is the owner of a large repertoire of

copyrighted works comprising cinematographic films, sound recordings etc. operating under the brand T-SERIES. It is further pleaded that plaintiff's business also includes giving licences to various organizations such as Broadcasting Organizations, Television Channels, FM Radio Stations, Multi-System Operators(MSO) and Cable TV Operators etc. for the use of its copyrighted works.

4. The defendant-Haldwani Digital Services Ltd., is said to be a Multi System Operator based in Haldwani, Uttarakhand, and is providing cable television services under the logo 'EXPLORE HDS' to various subscribers having operation majorly in the state of Uttarakhand including Kaladhungi, Haldwani, Nainital, having thousands of connections.

5. The plaintiff pleads that in June 2014 in the course of random monitoring of the defendant's broadcasts, the plaintiff company came to know about the unauthorized and unlicensed use of its copyrighted works on the defendant's cable television network. It is further stated that on coming to know of the said infringement, the Plaintiff addressed a legal notice to the Defendant dated 7th June, 2014 stating the specific instances of infringement of the Plaintiff's repertoire by the Defendant and requesting the Defendant to obtain the requisite public performance license to make their broadcasts legal. However, no reply was received.

6. The plaintiff has filed its evidence by way of two affidavits. One affidavit of PW-1 Mr. S.K. Dutta and another of PW-2 Mr. Sunil Puri has been filed.

7. PW-1/Mr. S.K.Dutta in his affidavit by way of evidence has stated that he is the Deputy General Manager of the plaintiff Company. He has also filed an additional affidavit where he has pleaded that the plaintiff's

repertoire represents huge investment of the plaintiff which includes costs towards recording arrangements with well-known artists, infrastructural costs and costs of maintaining and promoting the repertoire. It has also been pleaded that the plaintiff acquires copyright in all literary, musical, etc. works which it commissions and manages through assignments from its authors or other prior owners of copyrights. The plaintiff's business includes giving licenses to cable television networks, multi system operators, satellite TV, broadcasting organizations, FM Radio Stations, etc. He further pleads that the defendant is a multi system operator carrying on its business of providing cable TV services to subscribers in Uttarakhand. It is one of the largest ground cable network providers in the Uttarakhand. It is stated that a cable subscriber can have thousands of connections. Cease and desist notice was issued on 07.06.2014.

8. It has also been pleaded in the affidavit that the defendant would have around 12,000 subscriptions given the size and nature of the State of Uttarakhand. The infringing activity came to the notice of the plaintiff in June 2014. The plaintiff charges Rs.18/- per month per account for its license. Hence, it is pleaded that keeping into account the fact that the subscriber base of the defendant is approximately 12,000, there is a loss of license fee of Rs.25,92,000/- per year to the plaintiff (12,000 x 18 x 12).

9. Reliance is placed on the decision of the Division Bench of this court in *Hindustan Unilever Limited vs. Reckitt Benckiser India Ltd., 2014(57) PTC 495 (Del.) (DB)* whereby this court had granted general compensation to the tune of Rs.20 lakhs and exemplary damages of Rs.5,00,000/-. Hence, it is pleaded that penalty of exemplary damages be granted to the plaintiff.

10. The plaintiff also contends that under Section 58 of the Copyright

Act, 1957 the plaintiff is also entitled to conversion damages which would be the entire cost of the subscription.

11. Thus, according to the Plaintiff, the conversion damages in the present case would be Rs.2, 88,000/- per year.

12. The plaintiff further contends that a plaintiff may claim both damages for infringement and those for conversion as they are cumulative and not mutually exclusive. It is contended that the measure of damages in conversion is the value of infringing copies of the article/number of subscription.

13. PW-2 has proved the CD/DVD recordings of the infringing broadcasts made on 2nd June 2014 along with cue-sheets containing details of infringing broadcasts such as time of recording, film/album belonging to the plaintiff's repertoire, duration of infringement and reading along with the screenshots of the CD recordings as Ex. PW 2/3 and Ex. PW 2/4. Further, screenshots have been produced during the course of arguments on 31st October 2017.

14. It is quite clear from the un rebutted evidence placed on record that the plaintiff has copyrights to the large repertoire works comprising of cinematograph films, sound recordings, underlying musical and literary works. The plaintiff has also a licensing programme which is a regular part of its business whereby it grants licenses to the organizations such as FM Radio stations, TV and broadcasting organizations for the network channels. The defendant as per the evidence of record have been infringing rights of the plaintiff through their cable network wherein sound recordings, cinematograph films, underlying musical and literary works belonging to the plaintiff's repertoire have been communicated to the public without the plaintiff's permission and license. Hence, the defendant are liable to be

restrained from infringing the copyrights of the plaintiff. The plaintiff is also entitled to damages.

15. This court in *Hindustan Unilever Limited vs. Reckitt Benckiser India Ltd.*(supra) held as follows:-

“66. In India, the Supreme Court has affirmed the principles in *Rookes* (supra) and *Cassel* (supra). Interestingly, however, the application in those cases has been in the context of abuse of authority leading to infringement of Constitutional rights or by public authorities (ref. *Ghaziabad Development Authority v. Balbir Singh*, (2004) 5 SCC 6; *Lucknow Development Authority v. M.K. Gupta*, 1994 SCC (1) 243). As yet, however, the Supreme Court has not indicated the standards which are to be applied while awarding punitive or exemplary damages in libel, tortuous claims with economic overtones such as slander of goods, or in respect of intellectual property matters. The peculiarities of such cases would be the courts' need to evolve proper standards to ensure proportionality in the award of such exemplary or punitive damages. The caution in *Cassel* that "[d]amages remain a civil, not a criminal, remedy, even where an exemplary award is appropriate, and juries should not be encouraged to lose sight of the fact that in making such an award they are putting money into a plaintiffs pocket.... " can never be lost sight of. Furthermore-and perhaps most crucially-the punitive element of the damages should follow the damages assessed otherwise (or general) damages; exemplary damages can be awarded only if the Court is "satisfied that the punitive or exemplary element is not sufficiently met within the figure which they have arrived at for the plaintiffs solatium". In other words, punitive damages should invariably follow the award of general damages (by that the Court meant that it could be an element in the determination of damages, or a separate head altogether, but never completely without determination of general damages).”

16. It is clear that the defendant have deliberately carried out violation of the copyrights of the plaintiff. Hence, the plaintiff is entitled to punitive

damages.

17. In my opinion, I cannot rule out an element of over estimate of the subscriber base of the defendant as the defendant is ex parte. In the facts of the case in my opinion the ends of justice would be met if damages of Rs.20 lacs are awarded to the plaintiff.

18. I accordingly, pass a decree in favour of the plaintiff in terms of prayer 37(i) of the plaint. A decree is also placed in favour of the plaintiff and against the defendant for damages of Rs.20 lakhs. The plaintiff shall also be entitled to Simple Interest of 9% per annum from the date of the decree till recovery. The plaintiff is also entitled to actual costs.

19. The suit stands disposed of.

20. All pending applications also stand disposed of.

OCTOBER 31, 2017

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corrected and released on 9.4.2018

JAYANT NATH, J