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

Date of decision: 27.02.2015

+ CS(OS) 913/2013

AMLA MAZUMDAR Plaintiff

Through Ms. Sneha Jain, Adv.

versus

DINESH SHAILENDER & ORS Defendants

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

IA No.273/2014

1. This is an application filed under Order XII Rule 6 CPC to pass a decree in terms of the relief sought in the Plaint. The plaintiff has instituted the suit for permanent injunction for restraining the defendants from infringing the copyright, rendition of accounts etc.

2. Arguments have been heard. Defendants no. 3 to 8 are arraigned as proforma defendants and no relief is claimed against them. The Defendant no.1 and 2 did not file written statement and vide Order dated 10.02.2014 their right to file the written statement was closed. None has been appearing for the defendants thereafter. As none is appearing for the defendants even today, they are proceeded ex parte.

3. It is the contention of the plaintiff that the plaintiff alongwith the Defendant nos. 1, 3 to 8 are the legal heirs of Late Mr. Shankardas Kesarilal

who was popularly known by his pen name 'Shailendra ji'. It is contended that the plaintiff's father 'Shailendra Ji' is one of the most famous and revered Indian Hindi lyricist and poets of the 1950s and 1960s. It is stated that he has been associated with the most iconic hindi songs such as "*Awaara hoon*", "*Ramaiya Vastvaiya*", "*Mera Joota Hai Jaapani*", "*Piya Tose Naina Lage*" to name a few. He has also written various poems, some of which have been published and publicly recited.

4. It is the contention of the plaintiff that the plaintiff alongwith other legal heirs of Shailendra Ji, on his demise in 1966, devolved as the rightful joint owners of copyright in all original works authored and owned by Shailendra Ji in consonance with the Indian succession Act, 1925. It is stated that the works jointly owned by the legal heirs herein are 'literary works' within the meaning of section 2(d) of the Copyright Act, 1957. Thus, it is contended that, as of today, the plaintiff alongwith the joint owners, are entitled to the manuscript alongwith the copyright in the work and has the exclusive right to reproduce, publish, or to produce, reproduce any translation of the works, communicate the work to the public, distribute the work etc. It is also contended that a joint owner of a copyright cannot without the consent of the other joint owner, grant an interest in the copyright to a third party.

5. It is the contention of the plaintiff that the Defendant no.2, the main defendant in the present suit, is a publishing company under the name of 'Rajkamal Prakashan Pvt. Ltd.' which is believed to be the entity involved in the publishing of the book titled- 'Andar ki Aag' which contains published and unpublished poems authored by Shailendra Ji. Defendant no.1 is also one of the legal heirs and joint owner of the said copyright. It is contended that the

plaintiff believes that the infringing activities complained of in the present suit are being carried out jointly by Defendant no.1 and 2.

6. It is the contention of the plaintiff that on 08.05.2013 the plaintiff learned that Defendant no.1 in association with Defendant no.2 was launching a book containing the works authored by the plaintiff's father- Shailendra Ji, at the Constitutional Club, New Delhi. It is contended that the plaintiff shared her disapproval regarding the publishing of her father's unpublished work but Defendant no.1 went ahead and furtively ensued the publishing of Shailendra Ji's work in the form a book, titled- 'Andar ki Aag' without taking permission from the joint owners. It is further contended that the plaintiff was informed about the book launch one night prior to the event.

7. It is the contention of the plaintiff that on 09.05.2013, the plaintiff sent her representative to witness the event where Defendant no.1 alongwith Defendant no.2 carried out the book launch of 'Andar ki Aag' whereby the book was also placed on sale to the public. It is contended that by continual sale/reproduction/publishing of the copyrighted work which devolved upon the legal heir jointly are being flagrantly violated by Defendant no.1 and Defendant no. 2. The plaintiff contends that the intention of Defendant no.1 to claim sole ownership over the deceased father's works is apparent from the ensuing facts.

8. It is the contention of the plaintiff that the plaintiff served legal notice on Defendant no.1 and 2 to cease and desist from publication but no reply has been received to the legal notice.

9. The plaintiff has placed reliance on the undated letter received by Courier from Defendant no.1 on 11.11.2013. The plaintiff contends that in this letter the Defendant no.1 clearly admits that the copyright in the poems, songs

and film by Shailendra Ji are jointly owned by the legal heirs of Shri Shailendra Ji. The relevant portion of the said letter is as follows:

“I, Dinesh Shankar Shailendra, am one of the legal heirs of Late Shri Shankar Shailendra, along with my Late mother, Mrs. Shakuntala Shailendra and 4 siblings Mr. Shailey Shailendra (deceased), Mr. Manoj Shailendra, Mrs. Amla Majumdar and Mrs. Gopa Chandra. We are the joint copyright owners of Shri Shailendra’s work-poems, songs and the film Teesri Kasam that he produced.”

10. Hence, the joint ownership of the plaintiff alongwith the proforma Defendants has been admitted by Defendant no.1.

11. For the purpose of the application of Order XII Rule 6 CPC, I may refer to the judgment of the Division Bench of this Court in the case of *Vijay Mayne vs. Satya Bhushan Kumar, 142 (2007) DLT 483* where in paragraph 12 this Court held as under:-

“12. It is not necessary to burden this judgment by extracting from the aforesaid authoritative pronouncement as the learned Single Judge has accomplished this exercise with prudence and dexterity. Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6 CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely, in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case.

No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored.”

12. Learned counsel for the plaintiff has while arguing not pressed for rendition of accounts. In view of the clear admission contained in letter written by defendant No. 1 and the legal position, the application is allowed.

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13. As IA No.273/2014 has been allowed, the suit is liable to be decreed as above. However, the plaintiff has filed her evidence by way of affidavit. For completeness I may look at the evidence.

14. It is the contention of the plaintiff that by way of the letter dated 11.05.2013 addressed by Defendant no.1 to Defendant no.2, Defendant no.1 has admitted that royalties from publication of the Book is to be equally divided six ways between the five siblings and his mother (deceased).

15. The plaintiff has filed evidence by way of affidavit as PW1. She states that she is the daughter of Sh.Shailendra Ji. She states that she alongwith the Defendants in the present suit are the rightful legal heirs of Sh. Shankardas Kesarilal, also known as Shailendra Ji. It is stated that she alongwith other joint owners of the copyright receive royalties from the Indian Performing Right Society Ltd. (IPRS) for the public performance of Shailendra Ji’s songs, other works etc. The Royalty Distribution Certificate from IPRS is placed on record as Ex.PW1/2. She states that as a joint owner of Shailendra Ji’s work, she is equally entitled to the manuscript alongwith the copyright in the works and

thus she has an equal share in reproducing, publishing, producing her father's works. She states that on 08.05.2013, she learnt that Defendant no.1 in association with Defendant no.2 was launching a book containing the works authored by Shailendra Ji. She further states that despite having disapproved any notion of publishing the unpublished work of her father, Defendant no.1, in alliance with Defendant no.2 went on to publish Shailendra Ji's work in the form of a book titled 'Andar ki Aag'. The copy of the book alongwith the bill of purchase is filed on record as Ex.PW1/4. She further states that a cease and desist notice was sent to the Defendants on 09.05.2013. The legal notice alongwith the courier receipt has been placed on record as Ex.PW1/6(colly). She states that after the present suit was filed, she received a letter dated 11.05.2013 sent by Defendant no.1, which was forwarded by Defendant no.2 where the Defendant no.1 has clearly admitted that royalties from publication were to be equally divided six ways between the five siblings and his mother (deceased). The said letter has been placed on record as Ex.PW1/7. She states that Defendant no.1 addressed an undated letter to the plaintiff where he categorically admits that the plaintiff is the rightful legal heir of Lt.Sh. Shanker Shailendra and further in the letter it is stated that the plaintiff alongwith the Defendant no.1 and the proforma defendants in the present matter are joint owners of the copyright of the poems authored by Shailendra Ji. The undated letter has been placed on record as Ex.PW1/8.

16. In view of the averments made in the plaint and the documents relied upon, the plaintiff has established that she is one of the joint owner in the suit copyright. The Defendant no.1 was liable to take permission from all the owners of the copyright before publishing the copyrighted work of Late

Sh.Shanker Shilendra and should have been made part in the royalty share from the sale proceeds.

17. In view of the above, a decree is passed in favour of the plaintiff and against Defendants No. 1 and 2 for permanent injunction restraining the said Defendants, their partners or proprietors, their officers, agents etc. from selling, offering for sale, advertising, printing publishing, or in any form reproducing or communicating to the public the works or manuscript jointly owned by the legal heirs of late Shri Shankardas Kesarilal (Shailendra Ji) in the present suit.

18. The present suit and all pending applications are disposed of.

JAYANT NATH, J

FEBRUARY 27, 2015

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