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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 671/2021

PHONOGRAPHIC PERFORMANCE LIMITED Plaintiff
Through: Mr. Akhil Sibal, Sr. Advocate
with Mr. Ankur Sansal, Ms. Sucheta Roy
and Mr. Raghu Sinha, Advs.

Versus

CANVAS COMMUNICATION Defendant
Through: Mr. Rajat Manchanda, Ms.
Aditi Singhal, Ms. Somya Narula and Ms.
Deepanshu Bharti, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **ORDER**
31.07.2023

I.A. 13890/2023(Order XXXIX Rules 1 and 2 of the CPC)

1. By this application, the plaintiff seeks an interlocutory injunction against the defendant from playing, in an event to be held on 5 August 2023 at The Royal Plaza, New Delhi, recordings in which the plaintiff has copyright.

2. Mr. Rajat Manchanda, learned Counsel for the defendant does not dispute the fact that copyright in the said recordings does indeed vest with the plaintiff.

3. Mr. Akhil Sibal, learned Senior Counsel for the plaintiff has drawn my attention to an email dated 25 July 2023 addressed by the plaintiff to the defendant, when the plaintiff came to know of the defendant's intention to play the recordings in which the plaintiff held copyright, and to the response dated 26 July 2023, from the defendant

in that regard. These emails read thus:

“Email dated 25 July 2023 from the plaintiff to the defendant:

Dear Sir,

It has come to our attention that you are organizing an event at Hotel The Royal Plaza, New Delhi on 5th August 2023, where you are planning to use and exploit our copyrighted sound recordings. Kindly note that as per the order dated 17th December 2021, passed by the Hon’ble Delhi High Court in CS (COMM) No. 671 of 2021, you have been restrained from exploiting or using any sound recordings or other work in which we, i.e. Phonographic Performance Limited (PPL) hold the copyright as the same would tantamount to infringement of PPL’s copyright.

In view of the aforesaid, you are requested to: -

- i. To give an undertaking in writing in a form acceptable to us that you shall not play or exploit the sound recordings and/or contents and/or songs, in which we have rights without having obtained an appropriate Public Performance license; and
- ii. To cease and desist forthwith from playing and/or permitting the playing or commercial exploitation of the sound recordings on which we have the copyright without an appropriate license;

We trust you would honour the order passed by the Hon’ble Delhi High Court and take advance license from us against payment of due license fees, and do away with the avoidable situation of commitment of infringement which you will appreciate would carry unnecessary exposure of legal action from us.

Regards,

For Phonographic Performance Limited
Nisha Dubey

Response dated 26 July 2023 from the defendant to the plaintiff:

To: Nisha Dubey Nisha.Dubey@pplindia.org

Subject: Re: PPL Licence for your event at Hotel The Royal Plaza, New Delhi on 5th August 2023

Dear Madam,

This is in response to your email dated 25th July 2023, wherein you have asked us to take a license from you regarding the event being organized on 5th August 2023.

It has come to our attention that Cinefil Producers Performance Limited (“Cinefil”) has been granted registration under Copyright Act and the same is a government body authorized to grant licenses. Cinefil has also issued a communication wherein it has clarified that there is no requirement to take a license from an unregistered society such as PPL. A copy of the letter is attached with the present email.

We have also come across a communication issued by the DJ Sound & Light Association Chandigarh, wherein it has been made clear that no license is required to be taken from PPL, being an unregistered society. A copy of the letter dated 14 July 2023 is attached along with the present email.

Cinefil issues licenses for cinematograph films, which as per the Copyright Act, 1957 means any work of visual recording and includes a sound recording accompanying such visual recording. In view of the same, we shall not be taking a license from PPL but instead be taking a license from Cinefil which is a registered body and whose license would include even sound recordings.

Regards,
Canvas Communication”

4. Mr. Sibal submits that precise ground on which the defendant had contested the present suit instituted by the plaintiff before this Court on 17 December 2021, as reflected in para 12 of the order passed by this Court on the said date, was that the plaintiff was not entitled to issue licences in view of Section 33(1) of the Copyright Act 1957, as it was not a copyright society. This Court examined the said issue and held that in view of decision of the coordinate Bench in *Novex Communication Pvt Ltd. v. Lemon Tree Hotels Ltd.*¹, the owner of copyright in sound recordings ceded the right to issue licences in respect thereof, to persons who desire to play such recordings, only where exclusive right in that regard was granted by the owner to a copy right society. In all circumstances, the right of the

¹ 2019 SCC Online Del 6568
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copyright owner would subsist. In was in the light of this *prima facie* view that the Court passed the following interim directions on the said date:

“32. In view of the fact that a clear *prima facie* case has been established in favour of the plaintiff and that the considerations of balance of convenience and irreparable loss would also justify grant of interim relief, till the next date of hearing, the defendant is restrained from exploiting or using any sound recordings or other work in which the plaintiff holds copyright and as would tantamount to infringement of the said copyright held by the plaintiff. This would also include sound recordings which may be in the process of being exploited by the defendant in connection with the Work Expo Exhibition being presently held at Pragati Maidan.”

5. The Court is disturbed on the fact that without even seeking clarification from this Court or approaching this Court prior thereto, the defendant has, *vide* its email dated 26 July 2023 addressed to the plaintiff once again sought to question the plaintiff’s right to issue licences on the very same grounds, which were urged before this Court on 17 December 2021 and were, *prima facie*, found not to be acceptable. On that basis, the defendant has again written to the plaintiff stating that defendant it would obtain licence not from the plaintiff, but from Cinefil Producers Performance Limited and would proceed to play the recordings on 5 August 2023.

6. *Prima facie*, the defendant is acting in the teeth of the injunction granted by this Court on 17 December 2021, following a reasoning which was advanced before this Court on the said date and found *prima facie* not to be acceptable.

7. In view thereof, issue notice. Notice is accepted on behalf of the defendant by Mr. Rajat Manchanda.

8. Reply, if any, be filed within a period of four weeks from today with advance copy to learned Counsel for the plaintiff, who may file rejoinder thereto, if any, within a period of four weeks thereof.

9. The Court reiterates its direction that, till the next date of hearing, the defendant shall stand restrained from playing any recording in which the plaintiff holds copyright, without obtaining a licence from the plaintiff in that regard.

10. Needless to say, this would include that the event which is scheduled to be held on 5 August 2023 at The Royal Plaza, New Delhi.

11. Renotify for disposal of this application on 1 November 2023.

C.HARI SHANKAR, J

JULY 31, 2023

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