

(2013) 09 CAL CK 0045

In the Calcutta High Court

Case No : G.A. No's. 2121, 2149 of 2013, Apot No's. 328, 331 of 2013 and C.S. No. 202 of 2013

Asha Audio Co. and Another

APPELLANT

Vs

Om Prakash Sonik
 The Indian Performing Right
Society Ltd. Vs Asha Audio Co. and Others

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 1 CHN 99 : (2014) 57 PTC 354

Hon'ble Judges : Mrinal Kanti Chaudhuri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Abhrajit Mitra, Mr. Reetobrata Mitra, Mr. Soumabho Ghose and Mr. A.K. Choudhury, Anindya Kumar Mitra, Mr. Jishnu Chowdhury, Mr. Ayan Banerjee, Mr. Satadeep Bhattacharya, Mr. Amitava Ganguly and Ms. Nibedita Sarkar, Jayanta Mitra, Mr. Ratnanko Banerjee, Mr. Suddhasatta Banerjee and Mr. Santosh Kumar Ray, Kaushik Chanda, Pratap Chatterjee, Mr. Sarosij Dasgupta, Mr. Ranjan Bachawat, Mr. Debnath Ghosh, Mr. Soumya Ray Chowdhury and Ms. Soma Rahman, Ravi Kapoor, Mr. Chayan Gupta, Mr. Dwipraj Basu and Mr. Santosh Kumar Ray, Rupak Ghosh and Mr. Sunil Singhania, S.N. Mookherjee, Mr. Samrat Sen, Mr. Sounak Mitra and Mr. Prasanta Naskar, Shayan Roy Chowdhury and Ms. Sanchari Chakraborty, for the Appellant;

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.

FACTS:

1. The respondent No. 4 Indian Performing Right Society Limited is a company working inter-alia in the field of music looking after the interest of the creative people in the field of music like lyricist, composer, Music Company and others connected with the industry. On analysis of the facts we find, there was discontent and discord between the members of the society that resulted in various litigations. The present litigation was said to be an attempt to thwart a Government action in the guise of a so-called fight between two members on the

one side and the society and others on the other side. If we look to the plaint, we would find, the plaintiffs being two music companies were dissatisfied with the performance of the management of the society. They filed a suit in this Court inter-alia complaining of mismanagement, dereliction of duty by the people having management and control. They complained, there was no proper election for years together in the Board. The present management was involved in wrongful acts. They were supposed to pay royalties to the members. Similar suits were also filed in various other subordinate Court. The recent controversy would relate to an alleged grievance sought to have been raised against the society. In effect, it was rather an attempt to stall the measures that the Central Government had started taking against the society.

LIS:

In this backdrop, let us now decide on the present controversy for which we are invited. The present suit was filed by the people supporting the present management, rather the present management would support the cause of the plaintiff/appellant. The prayers in the plaint as summarized in paragraph 33 of the petition are as follows:

- a) A decree for the respondent Nos. 1 to 3 and all other persons found in control of the respondent No. 4 be directed to render true and faithful accounts of all undistributed royalty amounts so that appropriate decree may be passed after taking such accounts for distribution of unpaid royalty amongst the members entitled thereto.
- b) Decree be passed against the respondent Nos. 1 to 3 and other persons found to be in control of the respondent No. 4 for such sum as may be found due upon an enquiry made with regard to realization and distribution of the royalty collected by the respondent No. 4 and decree be passed against such persons for such sum as may be found due and payable.
- c) Decree for determination of what amounts are lying with the respondent No. 4 as unpaid royalty and as to how the same is to be distributed/utilized.
- d) Administrator be appointed over the affairs of the respondent No. 4 with specific power to take over all unpaid royalties lying with the respondent No. 4 so that the same may be distributed in accordance with the decree that may be passed in this regard.
- e) Administrator/Chair Person/Receiver/Special Officer be appointed and directed to conduct election of the governing council of the respondent No. 4 and to take the following amongst other measures.:
 - i) Convene a general meeting of all members of the respondent No. 4 to elect a governing council in accordance with the amended Article of Association of the respondent No. 4.
 - ii) Issue notice to all members as also the Registrar of Copyrights and comply

with all other formalities in connection with the convening of general meeting and election of members to the governing council.

iii) Intimate the Registrar of Copyright and all other authorities the result of the election.

iv) Hand over charge of the respondent No. 4 to the new governing council.

f) Administrator/Chair Person/Receiver/Special Officer be appointed for the purpose of taking control of the affairs of the respondent No. 4 as also taking steps for re-registration of the respondent No. 4 including the following measures:

i) Conduct election of the governing council in the manner indicated and intimate the outcome of such election to the respondent No. 5 along with all other members.

ii) Pursue the application for re-registration with the respondent No. 5 and ensure that the application is processed and re-registration granted and for this purpose do all things needful.

g) Perpetual injunction restraining the respondent Nos. 1 to 3 and all other persons in control and management of the respondent No. 4 from distributing and/or parting with any part or portion of the unpaid royalty lying with the respondent No. 4.

h) Perpetual injunction restraining the respondent No. 5 from insisting upon submission of a declaration as to royalty which is required to be submitted in case of renewal of registration as per Rule 47(3) of the Copyright Rules, 2013 and not for the purpose of re-registration of the respondent No. 4.

i) Perpetual injunction restraining the respondent No. 5 from in any manner interfering with the running of the business of the respondent No. 4 in the usual course pending re-registration under the Copyright Act, 1957 as amended.

j) Receiver;

k) Injunction;

l) Costs;

m) Further or other reliefs.

The petitioners crave leave to refer to a copy of the plaint at the time of hearing, if necessary.

2. If we look to the prayers, we would find, it was a suit for management and control. The reliefs were claimed principally as against the respondent No. 1 to 4, however, prayer that the plaintiffs are now pressing, would practically relate to respondent No. 5 being Union of India. Simultaneously, with the filing of the suit, the plaintiffs being the appellants above named in APOT No. 328 of 2013 filed an

application for appropriate relief as against the respondent No. 5, not to insist upon submission of a declaration as to royalty that was required to be submitted in case of renewal of registration and not for the purpose of re-registration. The plaintiffs approached the learned Judge by serving copy upon the defendant No. 1, 2, 3 and 4, all appeared and supported the prayer of the plaintiffs; respondent No. 5 was not served. The learned Judge possibly could not understand the real game and passed an interim order as prayed for. The learned Judge passed the interim order on June 20, 2013. On June 21, 2012 the Copyright (Amendment) Act 2012 came into force by which Section 33(3A), second proviso came into existence that would require all copyright societies to have re-registration under the new law. The respondent no. 4 duly complied on May 8, 2013. By letter dated May 24, 2013 the Union of India alleged non-compliance of Rule 47(3) that would require a society to submit a declaration that they were regularly paying the royalty to their members. According to the petitioners, such requirement was necessary only in case of renewal or registration and not re-registration and Union of India was not entitled to insist upon the same. The plaintiff would complain, no notice was served upon them and steps taken by the respondent no. 4 would be prejudicial to their interest. Thus, the effect of the said notice dated May 24, 2013, should be stayed, particularly in respect of Clause 1(V) contained therein. His Lordship made it clear, the order of stay would not otherwise affect the application for re-registration pending with the respondent no. 5. On the next day, Union of India appeared and contended, they were not served any notice. His Lordship immediately vacated the said ad interim order. This time, the real opposing group appeared and opposed the said application. His Lordship directed service of copies of the petition and adjourned the matter on a subsequent date. On the adjourned date, His Lordship heard all the parties including the Union of India and the interveners. His Lordship did not pass any interim order and gave directions for filing affidavits.

APPEALS:

3. Being aggrieved, four appeals were filed. The plaintiffs filed the appeal being APOT No. 328 of 2013 in view of ad interim order of injunction not granted. The society filed APOT No. 331 of 2013 as they would complain against the cursory remark of His Lordship as to collusion. APOT No. 363 and 367 were filed against the interpretation of His Lordship on Rule 47 and Section 33A of the said Act. The 1st, 2nd and 4th appeal were identical on the issue, they would also make complain against the cursory remark.

4. His Lordship, while giving directions, almost decided the application itself at least on the subject issue hence, we permitted the parties to argue the appeal on merit although we do not ordinarily encourage appeal at the ad interim stage when pleadings are yet to be completed. We permitted the parties to argue the appeals as it would raise absolutely question of law as also serious remarks made by His Lordship with regard to the genuinity of the grievance of the plaintiffs.

ANALYSIS OF THE JUDGMENT AND ORDER:

5. His Lordship delivered eleven pages well-reasoned judgment, the analysis of the said judgment would reveal, it had two parts:

- i) The interpretation of the relevant provisions of the Act and the Rules.
- ii) The conduct of the parties.

6. To take the second issue first, we find, His Lordship was misguided on the first date. The remarks at two places in the judgment, i.e., at page 5 where the learned Judge observed, "petitioner was not espousing his individual right but the cause of respondent no. 4" and at page 10 where His Lordship would observe, "the petitioner and the respondent no. 1 to 4 that each of them wants the same order and therefore again prima facie collusion cannot be ruled out".

7. On the legal aspect, His Lordship elaborately dealt with the provisions and the arguments advanced at the bar. His Lordship observed, the suit was filed inter-alia for reliefs with regard to accounts and non-holding of the election of the general council. The respondent no. 5 asked for certain information u/s 47(3) of the Copyright Rules 2013 at the time of re-registration. As regards general election, the Barasat Court already passed appropriate order. The direction contained in the letter dated May 24, 2013 asking the respondent no. 4 to comply with the provisions of the second proviso to Section 33(3A) had nothing to do with the re-registration. However, His Lordship observed, the second proviso to Section 33(3A) was introduced by the Copyright (Amendment) Act 2012 that would oblige every copyright society already registered to get itself registered within the time specified. It would entail all the conditions necessary for registration process. The provision of the Act would prevail upon the Rules, if there was any conflict. However, on a reading of Rule 47 re-registration and renewal are synonymous and in both cases application would be made in Form No. IX and in serial No. 10, the applicant would have to supply documents as mentioned in the Rule 47(3). Therefore, at the time of registration all the materials that would be needed, prima facie, would have to be looked into by the authority concerned.

CONTENTIONS:

Mr. Jayanta Mitra, Senior Advocate:

8. Mr. Mitra advanced his argument on behalf of the plaintiff. He would contend, by the Copyright (Amendment) Act 2012 Sub-Section 3A was introduced to Section 33 that would provide renewal of registration of the society who was already granted registration under original Sub-Section 3. The second proviso would suggest that such registration must be done within a period of one year from the date of the said Act of 2012 coming into force. According to Mr. Mitra, such requirement would not require submission of information with regard to renewal. He would rely upon Rule 47(3) where in case of renewal of registration, a copy of the resolution passed by the General Body declaring all the royalty

collected till the previous accounting year had been distributed to its members, could not be insisted upon while asking for compliance under new Section 3A. In short, he would object to the insistence of the Central Government in the notice dated May 24, 2013 wherein the Central Government asked for compliance of Rule 47(3).

9. Mr. Mitra would suggest, such issue was a pure question of law and the observation of His Lordship that the suit was a collusive one, was uncalled for.

Mr. Anindya Kumar Mitra, Senior Advocate:

10. From the appearance submitted in Court, we find, Mr. Mitra represented one Hassan Kamal the respondent no. 3 however, he argued on behalf of the respondent no. 4. Mr. Mitra would object only to the aspersion made by His Lordship. According to Mr. Mitra, the plaintiffs espoused the cause of the members of the society. The stand taken by the plaintiffs was the right stand that the management thought and as such the management of the society supported the plaintiffs on that issue. The learned Judge should not have made such cursory remark that too, at the ad interim stage. He prayed for quashing of the aspersion.

Mr. S.N. Mookherjee, Senior Advocate:

11. Mr. Mookherjee appeared for respondent no. 1 and made submission in support of the plaintiffs.

Mr. Ravi Kapoor, Advocate:

12. Mr. Kapoor would appear for the respondent no. 2 and supported the other appellants.

Mr. Abhrajit Mitra, Advocate:

13. From the appearance we find, Mr. Abhrajit Mitra appeared for the respondent no. 4. He did not make any submission, rather Mr. Anindya Kumar Mitra learned Senior Counsel said to be appearing for Hasan Kamaal, argued on behalf of the respondent No. 4.

Mr. Kaushik Chanda, Advocate:

14. Mr. Chanda appearing for Union of India supported the judgment and order impugned. According to Mr. Chanda, re-registration and renewal are synonymous and in any event, in both cases Rule 47(3) would have to be complied with. There was no conflict between the new provision under the Act being Section 33(3A) second proviso and Rule 47(3).

Mr. Pratap Chatterjee, Senior Advocate:

15. Mr. Chatterjee appeared for Anand Shrivastava, the intervener representing the opposite group. He would support Mr. Chanda. Mr. Chatterjee supported the judgment and order impugned.

16. Mr. Rupak Ghosh, Advocate:

Mr. Ghosh supported Mr. Chanda, appearing for one SS Sodhi.

Mr. Shayan Roy Chowdhury, Advocate:

17. Mr. Roy Chowdhury represented another intervener Sameer Pandey.

CASES CITED:

i) Smt. Ganga Bai Vs. Vijay Kumar and Others,

Mr. Chatterjee cited this decision to support his contention, appeal was not maintainable. The Apex Court observed, an appeal would rely only against an order provided u/s 104 where an appeal was expressly allowed under Order 43 Rule 1, no appeal could be maintainable against a mere finding of fact in absence of any appropriate provision.

ii) 2013 II CHC 465 (Securities and Exchange Board of India Vs. Satyaranjan Baidya):

18. Mr. Chatterjee also relied upon a Single Bench decision of this Court to support his contention. This Court held, a suit filed by an employee challenging an action against the company by SEBI would not be maintainable. Citing this decision, Mr. Chatterjee would contend, the appellants being the members of the respondent no. 4 could not question any action that the Central Government sought to take against the respondent no. 4.

OUR VIEW:

MAINTAINABILITY:

19. The learned Judge considered the relevant provisions of law and gave His Lordship's prima facie view. The cursory remark made by His Lordship was not the sole ground as we find from the memorandum of appeal filed by the respondent no. 4. Hence, it would not be wise for us to dismiss any appeal in limine holding it not maintainable in law. The interpretation of the statute, although prima facie in nature, would still be available for appeal. Moreover, we are impressed with the argument advanced by Mr. Anindya Kumar Mitra, even if we would hold the first appeal not maintainable solely on the ground of attack on the aspersion, he would still be entitled to question such finding in the other appeals where other issues were raised. Mr. Mitra would rely upon Rule 22, we doubt its applicability. However, Rule 33 would give him the required support. To avail Rule 22, the respondent would have to file a cross objection. Sub Rule 2 would require the objector to file a cross objection in the form of memorandum. It was for all practicable purpose, a cross appeal however, Rule 33 gives a wider power to the Court to examine the entire order or decree even if a portion of which was complained of by the appellant. Such power could be exercised suo-motu or at the instance of any of the respondents for which that party need not file an appeal. Hence, we hold all the above four appeals maintainable and reject

the contention of Mr. Chatterjee on that score.

20. On the interpretation of the relevant provisions, we find, the learned Judge upon considering the rival contentions gave His Lordship's prima facie view. At the same time His Lordship gave directions for filing affidavits. If we make any final observation on the interpretation of law that would prejudice the ultimate hearing of the interlocutory application. We gave opportunity to the parties. They did not invite us to decide the issue finally hence, we leave it open for the learned Judge to decide.

21. We have carefully perused the provisions of the Act and the Rules. We have considered the rival contentions and the interpretation of His Lordship. We would only observe, we affirm His Lordship's prima facie view. A new law has come into existence. Under the old law someone was having a registration. The new law would require re-registration. The old law already provided for renewal of the registration. His Lordship prima facie observed, this would be synonymous, in both case one would have to follow the Rules prevalent that would require compliance as prescribed. Renewal or re-registration would have to be done in Form IX. One of the requirements was submission of declaration. The society already replied to the said notice as it appears from the pleadings. It would be for the society to comply and the authority to decide on the re-registration and/or renewal. We do not find any scope for any member of the society to question such process. If a member is having a different idea than what the society would think and act that member could sue the society. There was no direct privity of contract between the member and the Union of India being the authority. Their challenge to the action of the Union of India de hors the society, would possibly be not maintainable. This is our prima facie view, it would be for His Lordship to decide such question finally at the appropriate stage. The challenge to the judgment and order on that score would thus fail.

22. On the cursory remark, we would observe, His Lordship perhaps made such observation in desperation. His Lordship expressed His Lordship's displeasure and gave a piece of her mind commenting on as to how the parties acted in the matter. Such observation was absolutely prima facie. We have every reason to believe, His Lordship would be with open mind when His Lordship would hear the matter upon completion of pleadings. In case, the appellants could explain their stand and conduct, His Lordship might change her view it would be too premature to draw a close on the issue. The appeal on that score would also thus fail.

RESULT:

All the four appeals along with the applications fail and are hereby dismissed. There would be no order as to costs.

Mrinal Kanti Chaudhuri, J.

I agree.