
(2013) 07 CAL CK 0044

In the Calcutta High Court

Case No : GA 1741 and 1830 of 2013 CS 202 of 2013

Asha Audio Company and Another

APPELLANT

Vs

Om Prakash Sonik and Others

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Citation : (2013) 55 PTC 240

Hon'ble Judges : Nadira Patherya, J

Bench : Single Bench

Advocate : Jayanta Kr. Mitra, Mr. Santosh Kr. Ray, Mr. S. Banerjee, Mrs. N. Kauser, for the Appellant; S.N. Mukerji, Saunak Mitra, Samrat Sen, Prasanta Naskar, Advocates for Respondent No. 1, Mr. S.K. Kapur, Mr. Ravi Kapur, Chayan Gupta, Dwipraj Basu, Advocates for Respondent No. 2, Mr. Anindya Mitra, Mr. Satadeep Bhattacharya, Ms. Nibedita Sarkar, Advocates for Respondent No. 3, Mr. Abhrajit Mitra, Soumabho Ghosh, Jishnu Chowdhury, Ritabrata Mitra, A.N. Chowdhury, Advocates for Respondent No. 4, Mr. Koushik Chandra, Advocate for Respondent No. 5 (Union of India), Mr. Anirban Roy, Advocate for Respondent No. 6 and Mr. Rupak Ghosh, Advocate for Surrinder Singh Sodhi, Sayan Roy Chowdhury, Advocate, Ms. S. Chakraborty for Sameer Pandey, Pratap Chattacherjee, Mr. Ranjan Bachawat, Debnath Ghosh, Soumya Roychowdhury, Advocates for Anand Srivastava, for the Respondent

Judgement

Nadira Patherya, J.—In a suit for a decree for rendition of true and faithful accounts of undisputed royalty so also appointment of administrator to distribute the royalty and convene a general meeting to elect the governing council of the respondents no. 4 this application has been filed for interim relief. The case of the petitioner is that Section 19(9) of the 1957 Act as amended by the Amendment Act 2012 specifically states that no assignment shall affect the right of the author to claim an equal share of royalties not only in a cinematographic film and also in a work which is not comprised in a cinematographic film Section 19(10) of the Act. Therefore, the plaintiffs are entitled to receive royalties from respondent no. 4 which is a copy right society.

2. By virtue of Section 33(3A) of the 2012 Amendment Act an application is to be made for re-registration within the time specified not only under the second proviso of Section 33(3A) of the Amendment Act 2012 but also Rule 47(1) of the 2013 Rules, within the time mentioned in the said Act. An application has been filed by the respondent no. 4 for re-registration. In the process of re-registration a show cause notice was issued to the respondent no. 4 whereby the Deputy Registrar of Copyrights on behalf of the respondent no. 5 has called upon the respondent no. 4 to intimate what steps have been taken to release the royalties due to some of the complainants who had filed complaints with regard to non payment of royalties to authors and music composers. This has been done under Rule 47(3) of 2013 Rules. On a reading of Rule 47 it will be evident that it deals with applications for re-registration or renewal. Admittedly the respondent no. 4 was already registered and needed to be registered under the second proviso of Section 33(3A) all that is required to be done is to re-register the respondent no. 4 without raising any query as raised in the letter dated 24th May 2013 specially (V). It is only in cases of renewal, that Rule 47(3) comes into play and this being not a case of renewal the said query could not have been raised on behalf of the respondent no, 5. By virtue of said queries raised the petitioner apprehends that steps will be taken to disburse the royalties and, therefore, deprive the petitioner receipt of its legitimate royalty. Therefore, orders in terms of prayer (b) and (e) of the notice of motion be passed.

3. Counsel for the respondent no. 3 submits that in view of the order dated 9th January 2013 which has been followed by the order dated 21st February 2013 the show cause notice dated 24th May 2013 is without jurisdiction and, therefore, be stayed. All that the respondent no. 4 is to do is to re-register the respondent no. 4 as a society which is in existence as a registered body and in compliance with the statute the application for re-registration has been filed, therefore, no enquiry is needed and as a matter of course registration should be effected. For registration purposes an application is to be filed with the Registrar of Copyright, who shall submit the application to the respondent no. 5. That has been done, therefore, there is nothing more to be done by the respondent no. 4 or the respondent no. 3 and re-registration be directed.

4. Counsel for the respondent no. 1 submits that Rule 47(3) has no application at the time of re-registration and, therefore, orders be passed.

5. Counsel for the respondent no. 4 submits that it has acted in accordance with law and is making disbursement in accordance with law. There can be no charge of deprivation against it by any of its member. It is ready and willing to abide by any order that may be passed by Court. It is only due to an order passed by the Barasat Court that the general meeting cannot be held by it and it has no intention not to hold the general meeting or conduct election of the governing council but for the order of the Barasat Court. In case, if any, direction from this Court either stalling distribution of royalty or payment of royalty so also conducting of election, such orders will be complied with.

6. Counsel for the respondent no. 5 submits that renewal is nothing but an extension of the registration granted. Re-registration and renewal are synonymous. That will appear from Rule 47 itself as in both cases of renewal so also re-registration the society is to file an application in Form IX, which the respondent no. 4 has complied with. Serial No. 10 of Form IX specifically seeks for documents mentioned in Rule 47(3) and Rule 48 and such documents have been submitted by the respondent no. 4 in compliance with the Amendment Act, 2012. To the letter dated 24th May 2013 a reply has been given by the respondent no. 4. On the basis of such reply, a hearing was also held on 31st May 2013 and a further letter was issued on 3rd June, 2013 whereby the Society was directed to take steps to call a fresh general body meeting and elect the governing council.

7. A written submission was called for and such written submission has also been submitted. At the time of registration under the 2012 Amendment Act the Central Government is not to act as a rubber stamp but has to consider all the conditions as in the case of registration and that is exactly what the Deputy Registrar of Copyright has sought to do. Therefore, the letter dated 24th May 2013 and, clause (V) of such letter by which a query has been raised needs no interference.

8. On behalf of the intervenor Anand Srivastava, who is a music composer and member of the Society, it has been submitted that in 2007 the respondent no. 4 took undertaking from its members but such undertaking has not been signed by the intervenor and, therefore, no royalty paid to him. Therefore, complaints were lodged. In the suit filed before the Barasat Court, a show cause notice dated 30th August 2012 is under challenge. The relief sought is similar in nature as a scheme is sought to be prepared for distribution of royalties. PPL which is a company dealing with the royalties to be paid to sound recording companies and music companies has appointed Select Media to collect royalty against a fee. The order dated 9th January 2013 has in no way restrained payment of royalties under the new Act. The suit filed before the Barasat Court and Sealdah Court have been suppressed as it finds no mention in the plaint or the petition. Admittedly, the registered office of the respondent no. 4 is in Mumbai and it cannot be disputed that the respondent no. 4 has numerous administrative offices all over the India. Therefore, this Court lacks jurisdiction in view of AIR 1994 SC 225.

9. The petitioner is a member of the respondent no. 4 and cannot have a right greater than that of respondent no. 4. The petitioner is not espousing its individual right but in fact espousing the cause of the respondent no. 4. Therefore, in view of Securities and Exchange Board of India and Another Vs. Satya Ranjan Baidya and Others, this application warrants no order. The suit is bad for misjoinder of causes of action. Allegations have been levelled against the respondent no. 5 and all that the respondent no. 5 is seeking to do is to ascertain in action on the part of the respondent no. 4. In the Barasat Court suit

orders were passed as no affidavit-in-opposition was filed at the time of final disposal of the application. It has been pleaded in paragraph 13 of the petition that on the date of amendment of the Articles of Association the publisher members that is, the music companies were the owners of right and their names feature in the Register of Owners. This evidences the intent of the respondent no. 4 to isolate and remove the intervener and persons similarly situate which is contrary to Section 19(9) and 19(10) of the Act. The Second proviso of Section 33(3A) deals with registration under the 2012 Act. In view of suppression of the prior two suits and persons affected not being made parties, this suit is not maintainable. The petitioner has been set up by the respondent no. 4 and, the proceedings are collusive in nature. In view of Section 33[5] of the Act, the Society was required to intimate the Central Government at the time of change in the instrument by which the respondent no. 4 was established, incorporated or registered. This also has not been complied with by the respondent no. 4. Section 33[3A] second proviso speaks of registration under the 2012 Act and it is only in Rule 47 that the term "re-registration" has been used. Therefore, the Act is to prevail over the rules and not vice versa. For all the said reasons, therefore, no order be passed on this application.

10. On behalf of the lyricist, Samir Pandey, a member of the respondent no. 4 since 1993 it has been submitted that in paragraph 36 of the plaint it is pleaded that the suit is being filed on behalf of all members similarly situate and interested in the subject matter of the present suit. The intervener lyricist though a member is not similarly situate and its interest is adverse to that of the plaintiffs. Therefore, the petitioner cannot represent its members. For the said proposition reliance is placed on *Harkisondas Shivilal and Others Vs. Chhaganlal Narsidas and Others*, . An artist, Mr. S.S. Sodhi is sought to be represented through counsel, who adopts the submissions of the intervener and the lyricist, Samir Pandey.

11. In reply, it is submitted by counsel for the petitioner that the decision reported in *Morgan Stanley Mutual Fund Vs. Kartick Das*, is not applicable at this stage as the suit has been filed after obtaining leave under Clause 12 of the Letter's Patent and unless an application for revocation of leave granted is filed the suit remains on the file of this Court. Mala fides have been alleged in respect of the non disclosure of the Barasat Court proceedings so also Sealdah Court; proceedings. The subject of these two proceedings did not in any way attract the Amendment Act of 2012 but was based on the show cause notice dated 30th August, 2012 and the orders passed by the Barasat Court and Sealdah Court are also in respect of the show cause notice dated 30th August, 2012. Such interim orders have been sustained in revision by two Hon'ble Judges of this Court and in the final hearing the interim order passed has been sustained. In the earlier suits, the 2012 Act and Rules have not been considered. Therefore, the cause of action in this suit differs from the cause of action in the earlier suits and Section 33[3A] second proviso so also Rule 47 is being considered for the first time in the suit filed. Therefore, the question of suppression of facts or orders does not

arise. Rule 47[3] relates to renewal and in no way deals with the situation of re-registration. Therefore, can have no manner of application at the time of re-registration. The applicant in GA No. 1830 of 2013 has raised numerous grievance but no suit has been filed by them. Respondent no. 4 was initially registered in 1969 and as derivative action can be maintained, the instant suit is nothing but in the nature of derivative action. Therefore, Harkisondas Shivilal and Others Vs. Chhaganlal Narsidas and Others, and Securities and Exchange Board of India and Another Vs. Satya Ranjan Baidya and Others, will not apply to the facts of this case.

12. Having considered the submissions of the parties, the instant suit has been filed against the respondent no. 4 by one of its members and the reliefs sought is with regard to accounts and holding a general meeting for conducting the election to the governing council. The petitioner also seeks an order restraining the respondent no. 5 from insisting on certain information under Rule 47[3] of the Copyright Rules, 2013 at the time of re-registration. As regards the general election to the governing council no order can be passed in view of the order passed by the Barasat Court initially on 25th November, 2004 and finally on 4th October, 2007. Whatever may be the reason for confirming the order dated 25th November, 2004 but the fact is that the order dated 25th November, 2004 has been confirmed and one of the reasons recorded in the order dated 4th October, 2007 is non filing of affidavits by the defendants therein. From a reading of the order itself ex facie it appears that the respondent no. 4 herein was the defendant no. 1 therein i.e. before the Barasat Court and no affidavit was filed by it. In view of such order, passed restraining holding of the general meeting for conducting the election no interim order can be passed with regard to holding of election.

13. The next issue that needs to be considered is the propriety of the direction contained in the letter dated 24th May, 2013 and Section 33[3A] and its proviso so also Rule 47. Section 33 of the Copyright Act deals with registration of a Copyright Society. Any Society for registration purposes is to apply to the Registrar of Copyrights, who will submit the application to the Central Government. The Central Government in the interest of the authors and other owners of rights will register the Society subject to conditions prescribed by it. The second proviso of Section 33[3A] has been introduced by the Copyright Amendment Act, 2012 and postulates that every Copyright Society, which is already registered shall get itself registered within the time specified. Therefore, registration is mandatory. The legislature in its wisdom while incorporating sub-section [3A] of Section 33 and the second proviso with which we are concerned with at present used the term "registered" Therefore, it would entail all the conditions necessary for registration purposes. Much has been sought to be made out of the word "re-registration" used in Rule 47 of the 2013 Rules but the provision of the Act must prevail over the Rules and, therefore, the intent of the legislature as per the provisions of the Act was that the Society was to get itself registered and not re-registered as mentioned in the Rules. In fact, on a reading

of Rule 47 of the 2013 Rules itself it will appear that re-registration and renewal are synonymous. As in both cases the application is to be made in Form DC and in serial no. 10 of Form DC the applicant is to supply documents as mentioned in Rule 47[3] of the 2013 Rules. 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. In fact, it is the respondent no. 4, who has filed an application for registration and it would be the respondent no. 4, who, in fact, would be the aggrieved person in respect of the notice dated 24th May, 2013. The respondent no. 4 is a registered Copyright Society and comprised of its members. All that it does is to collect royalties and distribute the same amongst its members, whose rights it is to protect. Therefore, the respondent no. 4 is the body, which would be looking to the interest of its members. In the instant case, the respondent no. 4 has answered the queries raised by the respondent no. 5 and has raised no objection thereto. In fact, the queries raised in the letter dated 24th May, 2013 has been considered by the Central Government at its meeting held on 31st May, 2013 and by the letter dated 3rd June, 2013 it has called upon the respondent no. 4 to conduct an election of its governing council. This letter is not under challenge. All that the petitioner would be interested in is receiving royalties and in the entire petition there is no whisper with regard to the royalties which is due or payable by the respondent no. 4 to the petitioner. The order sought is based on an apprehension that in view of the query raised by the Central Government, royalties will be disbursed by the respondent no. 4. The respondent no. 4 has submitted that the disbursement made by it is in accordance with law, and royalties in respect of which there are disputes and unclaimed royalties have not been paid by it. Therefore, it appears that the apprehension of the petitioner is unfounded at this stage as no overtly action is being undertaken by the respondent no. 4 to disburse the royalties. It is very surprising that the respondent no. 4 is agreeable to any orders that may be passed by this Court. It is also agreeable to a restrain order being passed against it in respect of disbursement of royalties. This would definitely not be in the interest of its members and the feeling that one gets is that by giving a reply to the letter dated 24th May, 2013 the respondent no. 4 was restrained from challenging the same and, therefore, has set up the petitioner to challenge the said order. In seeking the orders as sought, the respondent no. 4 is in effect seeking to preempt any order of rejection that may be passed against it. To intercept an order of rejection at this stage would be to prevent an authority from exercising its powers under the Act and acting in accordance with law. Admittedly, the Rules have not been challenged and as the provisions of the Act must prevail over the Rules this application at this stage warrants no order.

14. It will not be out of place to mention that from the submissions made by the petitioner and the respondent nos. 1 to 4 that each one of them wants the same order and, therefore, again prima facie, collusion cannot be ruled out. The petitioner seeks an automatic registration but an authority is not to act as a rubber stamp but to apply its mind while registering a Society because if the

authority does not do so it will have to bear the burnt of the Courts of law for non application of mind. Although GA No. 1830 of 2013 has been filed and no order has been passed thereon but an opportunity of hearing was given to not only the Music Composer but also the Lyricists and Artists, who under the Act will be entitled to royalty. What emerges at this stage, therefore, is that there are two groups and although the petitioner has filed the suit on behalf of all the other members of the respondent no. 4 but the Lyricists, Artists and Music Composers do not constitute that group, whose cause the petitioner is pursuing. In fact, the case of the petitioner is contrary to the interest of this set of members. Therefore, this group of members was heard.

15. Directions are given for filing affidavits. Let affidavit in opposition be filed within three weeks from date; reply thereto, if any, be filed within two weeks thereafter. Matter to appear in the list six weeks hence. All parties concerned are to act on a signed photocopy of this order on the usual undertakings.