

(2015) 03 MAD CK 0140

In the Madras High Court

Case No : A. Nos. 7701, 6795 of 2014 and O.A. Nos. 760 to 762 of 2014 in C.S. No. 625 of 2014

Ilaiyaraja

APPELLANT

Vs

B. Narsimhasn, Agi Music Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 39 Rule 3(a), Order 7 Rule 11
Constitution of India, 1950 — Article 226, 227
Contract Act, 1872 — Section 196, 196, 197, 197, 198
Copyright Act, 1957 — Section 14(a), 14(e), 17, 18(2), 19(5)

Citation : (2015) 3 CTC 622 : (2015) 63 PTC 358

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : S.K. Rakhunathan, for the Appellant

Judgement

R. Subbiah, J.—Heard Mr. S.K. Rakhunathan, learned counsel appearing for the applicant (plaintiff) in A. No. 7701/2014 and O.A. Nos. 760 to 762 of 2014, Mr. R. Sathish Kumar, learned counsel for the applicant (second defendant) in A. No. 6795/2014, Mr. S. Vijayaraghavan, learned counsel for the fourth defendant and Mr. A. Selvendran, learned counsel for the fifth defendant.

2. Applicant in A. No. 7701, 760 to 762 of 2014 is the plaintiff in C.S. No. 625 of 2011 and the respondents are the defendants 1 to 5 in the Suit. The applicant in Application No. 6795 of 2014 is the second defendant in the said suit. For the sake of convenience, the parties will be referred as per their rankings in the suit.

3. Application No. 7701 of 2014 has been filed under Order 14 Rule 8 of O.S. rules read with Order 2 Rule 2 of C.P.C., to grant leave to the applicant/plaintiff to file a separate suit, for the reliefs reserved by the applicant/plaintiff.

4. Original Application No. 760 of 2014 has been filed by the plaintiff to grant ad-interim injunction restraining the defendants from violating the rights of the

plaintiff in respect of the suit schedule mentioned films, in any way, particularly by entering into or attempting to enter into or after entering into, performing or assisting in the performance of, any agreement with any third party of the suit schedule mentioned films.

5. Original Application No. 761 of 2014 has been filed by the plaintiff to grant ad-interim injunction restraining the defendants its agents, officers, servants, representatives, franchise and all others in any capacity, acting for or on behalf of the defendants, from manufacturing, selling, distributing or in any other way infringing the plaintiff's exclusive right under the Copyright Act to deal in any sound recording composed or made by the defendants.

6. Original Application No. 762 of 2014 has been filed by the plaintiff to grant ad-interim injunction restraining the defendants from communicating with the plaintiff's dealers, suppliers or customers, in a manner adverse to the plaintiff company's reputation and in particular, from purporting to question the plaintiff's right to exploit the works composed or claim conflicting rights.

7. Application No. 6795 of 2014 has been filed by the 2nd defendant seeking to reject the plaint.

8. The brief facts of the case of the applicant/plaintiff as follows:-

8(1) The plaintiff is an Indian film music composer who works predominantly in the South Indian Cinema since late 1970s. He is an instrumentalist, conductor, singer and a songwriter. He has composed more than 4500 songs.

8(2) Though the plaintiff holds right over the works performed by him, he could not allocate the time to exhibit or exploit or distribute or publish the same in a proper manner. The defendants 2 to 4, who are being the Managing Directors of the respective companies and who are in the jobs of promotion of various songs and publication, had approached the plaintiff for exploitation of musical work and sound recording of film songs and they were granted permission for publication of the songs on various mode of transmission with the condition to pay royalty to the plaintiff, apart from initial cost of the assignment. The defendants, being the company formulated for the publication, taking advantage of the plaintiff's innocence, without paying the amount as well as royalties to the plaintiff, are trying to swindle the entire proceeds and profits of the sound recording, by showing some formal account to the plaintiff. When the plaintiff questioned the act of the defendants, the defendants have resorted to legal proceedings with forged and invalid documents, projecting the same as documents for them to use the musical work absolutely, which is against law. In fact, the applicant was never paid any royalty for the works performed by him and in fact, some of the defendants have illegally assigned the right to third parties as if they are holding the valid rights over the assignment.

8(3) The plaintiff is the sole and absolute copy right owner and no one else has any right and any document executed in favour of the defendants is ex facie

illegal and incorrect. The assignment made in favour of the defendants have also expired and hence, they cannot claim any privilege or priority over the same and unless the said documents are revived or re-written by the plaintiff, those documents executed in favour of the defendants or any authority alleged to have been held by the defendants will not give any proper authentication or authorization to use the music and sound recording of the plaintiff.

8(4) The plaintiff learnt that the fourth defendant is continuously exploiting the document to the third parties by infringing the rights of the plaintiff. In fact, a police complaint has also been preferred by the plaintiff's fan club as against the fourth defendant for the libel version published in the website on 19.5.2014. The plaintiff has also issued notice to the first defendant and the fourth defendant for the violation of the copyright of the plaintiff. Both of them have not received the notice. Now, the defendants have no right to exploit the works and sound recording of the songs, including the musical work contained therein, in any manner either in the digital internal telephony analogy or any modes for the remixing, since every such right of publishing the copy of the sound recording can be exercised by the plaintiff alone. Hence, the plaintiff has filed the present suit for the following reliefs:

"(a) Permanent Injunction restraining the defendants from violating the rights of the plaintiff in any way particularly by entering into or attempting to enter into or after entering into, by performing or assisting in the performance of any agreement with any third party, of the suit schedule mention films.

(b) Permanent Injunction restraining the defendants, its agents, officers, servants, representatives, franchise and all others in any capacity acting for and on behalf of them, from manufacturing, selling, distributing or in any other way infringing the plaintiff's exclusive right under the Copyright Act to deal in any sound recording composed or made by the defendants.

(c) Permanent injunction restraining the defendants from communicating with the plaintiff's dealers, suppliers or customers in a manner adverse to the plaintiff's company's reputation and in particular from purporting to question the plaintiff's right to exploit the works composed or claim conflicting rights and cost of the suit.

9. Pending the suit, the plaintiff filed the Original Applications Nos. 760 to 762 of 2014 for the reliefs as stated supra. This Court, by order dated 25.09.2014 in A. No. 761 of 2014, has granted interim injunction and ordered notice to the defendants.

10. On appearance, the fourth defendant, who is the contesting respondent in the above said applications, has filed a detailed common counter affidavit. The sum and substance of the counter filed by the fourth defendant is as follows:-

(i) The plaintiff has obtained the interim order by suppressing several material facts. In fact, the plaintiff has suppressed the significant fact about the prior suit,

namely C.S. No. 308 of 2013 filed by the fourth defendant as against the plaintiff. The said suit is now pending before this Court and the arguments in the applications filed in the said suit have also been heard in part. The fourth defendant herein has sought injunction as against the plaintiff herein on the same subject matter, namely, musical rights of the plaintiff granted to this defendant. This is a serious suppression of fact and if this fact has been disclosed at the earliest point of time, this Court would never have granted interim injunction in favour of the plaintiff. Like wise, two agreements, viz., Sound Recording Licensing Agreement and Sub-Publishing Agreement, both dated 24.11.2007, which were granted by the plaintiff's wife, on the instruction and assent of the plaintiff, in favour of the defendants, were also suppressed. In fact, in the said agreement, it has been made clear that all payments of royalty should be made in favour of the plaintiff. The plaintiff has been periodically receiving his share of royalty. This vital and crucial fact has been completely kept away from this Court and suppressed by the plaintiff.

(ii) On 24.11.2007, the plaintiff gave a letter of authorization in favour of the fourth defendant asking them to take legal action against persons who violated or infringed the plaintiff's musical rights. This document has also been suppressed.

(iii) Similarly, another letter of authorisation, dated 24.11.2007, which was given on the plaintiff's instruction by his wife Jeevaraja in respect of plaintiff's musical rights, has also been suppressed. The plaintiff, over the years, has received various amounts as royalty under the said agreements dated 24.11.2007. Yet, the plaintiff has come to Court stating that royalties have not been paid. This is again a false statement.

(iv) In fact, in Document No. 8 filed along with the plaint, the plaintiff accepted the payment of royalties. The plaintiff after giving these rights through his wife, had openly come out with a press statement stating that he had granted licence to this defendant and wanted to inform the public that he had granted such rights including manufacturing and distributing his songs in any format.

(v) On 12.7.2011, in a letter addressed to the Indian Performing Society Limited, the plaintiff affirmed the validity of the agreement between the plaintiff and the fourth defendant and further stated that he had appointed the fourth respondent as sub-publisher. In fact, this letter has also been suppressed before this Court.

(vi) Like wise, several SMS exchanged between the plaintiff and the fourth defendant would show the validity of the agreements and proof regarding the payments of royalty besides discussion as to legal proceedings and actions to be taken in those matters.

(vii) The fourth respondent has appointed distributors, agents, and subsidiary agreement holders, all over the territory, covered by the agreement. The plaintiff has indulged in high handed and illegal actions spreading canards in the market or preventing the fourth defendant from exercising his rights.

(viii) In fact, in the year 2012, when the fourth respondent tried to remit the plaintiff's share of royalty into his bank account, as practised earlier, he was informed that the bank account has been closed. Hence, the fourth defendant wrote a letter to the plaintiff, informing him that his old bank account had been closed and asking him to nominate a fresh bank account, so that money could be remitted to the account of the plaintiff. Though the said letter was received, the plaintiff had never nominated any bank account. In fact, plaintiff through his wife entered a sound recording licensing agreement dated 24.11.2007, granting the fourth defendant absolute right to exploit his musical work. This sound recording licensing agreement authorises the fourth defendant inter alia for a period of 10 years from the date of the agreement to manufacture, sell and distribute music products in the format of CDs, DVDs, Cassettes etc., as a licensee. The said agreement is still in force. But the said fact has been completely suppressed. The plaintiff has gone to the extent of saying that the defendants are acting under forged and invalid document, after regularly receiving royalties from the defendants after acting upon them. The fourth defendant has acted only legally and validly by granting rights to third parties based on the agreement dated 24.11.2007. Thus, they sought for dismissal of the injunction applications.

11. The plaintiff has filed a reply affidavit, denying the allegations made by the defendants that the plaintiff has suppressed the material facts. The plaintiff has stated that C.S. No. 308/2013 filed by the fourth defendant as against the plaintiff for the relief of permanent injunction, restraining the plaintiff from violating in any way the negative covenant or any other provision of the alleged agreement dated 24.11.2007, particularly by entering into or attempting to enter into for performing or assisting in the performance of any agreement with any person inconsistent with the terms of the agreement dated 24.11.2007. The applicant/plaintiff is contesting the said suit. However, pendency of the said suit will not preclude the plaintiff from filing the present suit, for protecting the plaintiff's copyright over the musical work, for which the plaintiff is the owner. It is seen that the fourth defendant is relying on invalid documents in respect of musical work. On 24.11.2007, the plaintiff assigned the copyright throughout India in favour of his wife Jeevaraja, who died on 31.10.2011. The assignment granted in favour of the plaintiff's wife did not stipulate any period of assignment. Hence, the said assignment made by the plaintiff in favour of the plaintiff's wife would fall under Section 19(5) of the Copyright Act and therefore, the period of validity of the assignment was only for a period of five years. The period of five years has already expired on 23.11.2012. Since the assignment of copyright in favour of his wife Jeevaraja expired on 23.11.2012, there is no question of giving licence by the said Jeevaraja to the fourth defendant to exploit the rights for any period beyond five years much less for a period of 10 years. There is no direct contract between the plaintiff and the fourth defendant with regard to assignment of copyright either in sound recording rights or sub-publishing agreement. The fourth defendant cannot rely on the alleged licence granted by Jeevaraja, plaintiff's wife. Even when plaintiff's wife Jeevaraja

granted the licence in favour of the fourth defendant, the licensor herself has directed the payment of royalty to the plaintiff directly. In view of the fact that the licensor died, the licence granted by her also stands expired with the death of the licensor. The agreements and the letter of authorisation dated 24.11.2007 relied upon by the defendants 4 and 5 are not valid in law, as the licensor has no right to grant licence beyond the period, for which she was granted right from the plaintiff under the assignment dated 24.11.2007. Further, the fourth defendant, under whom the fifth defendant claims rights, are all infringers of the plaintiff's copyright and are exploiting his copyrights without any authority. The fourth defendant's allegation that the agreement dated 24.11.2007 is a valid agreement and the same is for a period of 10 years, on the face of it, is false. Thus, the plaintiff sought for making the interim order of injunction as absolute.

12. Application No. 6795 of 2014 (application for rejection of the plaint filed by the 2nd defendant):-The sum and substance of the application filed by the second defendant to reject the plaint are as follows:-The second defendant is a company and is in the business of manufacturing and marketing music Cassettes, CD's and other sound recordings. Section 2(d) of the Copyright Act defines "author". As per Section 2(d)(v), as regards a cinematograph film or sound recording, the producer is the author for the purpose of this Act. Hence, the plaintiff does not have any right, whatsoever over the claims made in the plaint. The present suit is filed based on the claim that the plaintiff is the sole and absolute owner of the right in respect of the musical works, sound recording, contained in the films as well as the independent artistic composer. In the light of Section 2(d)(v) of the Copyright Act, the claim of the plaintiff is nullified. Therefore, he has no cause of action at all as against the second defendant, since the second defendant company had obtained right from the producers of the respective films. The second defendant had over 500 agreements with different producers for various films. The said copyright agreements give the second defendant the exclusive right to market and exploit the sound recordings of the respective films. The present suit and applications are filed by the plaintiff against five different entities without showing the nexus or connection between them and the relief sought for in the plaint. The second defendant does not have any role to play in the activities of other defendants. However, the second defendant denies that the plaintiff is the sole and absolute owner of the right in respect of musical works, sound recording, contained in the films as well as in the independent artistic composer, as the same would vests only with the producer. The plaint and the applications are silent as to the agreements which the plaintiff had with each of the individual producers mentioned in the plaint schedule movies. Unless the said agreements are produced and the extent of the rights pleaded, the plaintiff cannot be the owner of the copyright. The second defendant has also denied that they are assigning any right to third parties, as if they are holding valid rights. The agreements of the second defendant with the producers cannot be questioned by the plaintiff, unless they contravene any of the agreements between the plaintiff and the second defendant. Copyright over

the schedule film songs or sound tracks only vest with the producer and not to the music director. The plaintiff has no cause of action to file a suit against the second defendant. Thus, the 2nd defendant sought for rejection of the plaint.

13. To the application to reject the plaint filed by the 2nd defendant, the plaintiff has filed a counter, stating that the plaintiff is the first owner of the copyright under the Copyright Act. Therefore, he is entitled to maintain the above suit, as against the second defendant, who has infringed the copyright. Section 17 of the Copyright Act and Section 2(d)(ii) of the Copyright Act have to be read together and on a correct appreciation of the said provisions, it would reveal that in respect of a musical work, the composer is the author. The plaintiff has been the composer of musical work for various films. Therefore, as author of the musical work, the plaintiff has the first ownership of the copyright in the musical work. The second defendant has infringed the plaintiff's copyright by distributing CDs and Cassettes of his musical work and therefore, the second defendant is made as a party to the suit. The other defendants in the suit have also infringed the plaintiff's copyright. Therefore, to protect his copyright over the musical work, the plaintiff is entitled to sue all the parties. The suit has been rightly instituted seeking for injunction restraining the defendants from infringing the copyright. The averments contained in the plaint have to be read as a whole. The averments in the plaint would reveal that all the defendants have infringed the plaintiff's copyright over the musical work. The application filed by the second defendant would not fall within the purview of Order 7 Rule 11 of CPC. Thus, the plaintiff prayed for dismissal of the application seeking rejection of the plaint.

14. The learned counsel appearing for the plaintiff would submit that the plaintiff is the film music composer and a music director and doing music composing since 1970. He has so far composed more than 4500 songs. By Letter of Assignment dated 24.11.2007, he has assigned all his rights including sound recording right, publishing right, public performance right, digital media right, new media right, collar tunes, ring tone right, true tone right, rights and interests in the musical composition created by him in favour of his wife Jeevaraja. In this regard, the learned counsel appearing for the plaintiff has invited the attention of this Court to the Letter of Assignment dated 24.11.2007 and submitted that the said letter of assignment did not stipulate the period of assignment or the geographical limits of exploitation. Since the letter of assignment did not stipulate the period of assignment, then as per Section 19(5) of the Copyright Act, the validity of the assignment is only for a period of five years. Pursuant to assignment made by the plaintiff in favour of his wife, subsequently, the wife of the plaintiff has given licence to the fourth defendant, namely M/s. Agi Music Sdn. Bhd., Malaysia, by way of two agreements dated 24.11.2007, namely Sound Recording Licence Agreement and Sub-Publishing Agreement to manufacture, sell and distribute music product in format of compact Disc, DVD, Cassettes, Super Audio CD, Digital format distribution including AAC, MP3, RAR WAV, WMA and all other digital formats and any format, which will be available now and may be available in future, without limitation or

restriction, with respect to the music recordings masters and set forth in Schedule A of the agreements. Since the plaintiff has assigned the copyright in favour of his wife on 24.11.2007 without mentioning any time limit, the licence given by the wife in favour of the fourth defendant also can be for a period of five years. The said five years period expired on 23.11.2012. In spite of expiry of licence, the fourth defendant continued to exploit the musical work. Since the licence already granted is not renewed, the fourth defendant is not entitled to exploit the musical work of the plaintiff, after the expiry of 5 years from the date of licence agreement. Since they have been continuously exploiting the musical work even after the expiry of the licence granted by the plaintiff's wife in favour of the fourth defendant, the plaintiff issued a legal notice on 11.12.2013. This notice was received by them and reply was also sent on 30.01.2014. In spite of the notice, the fourth defendant is exploiting the musical work of the plaintiff. Hence, the defendants have to be restrained by way of injunction.

15. Per contra, it is the submission of the learned counsel appearing for the fourth defendant that the present suit has been filed by the plaintiff by suppressing several material facts. Even prior to the filing of the present suit by the plaintiff, the fourth defendant has already filed a suit against the plaintiff and one Modern Cinemas. The said suit was filed by the fourth defendant herein for restraining the plaintiff from entering into any agreement with any third party inconsistent with the terms of agreement dated 24.11.2007 executed by the wife of the plaintiff in favour of the fourth defendant. The said suit was suppressed by the applicant/plaintiff. Secondly, the learned counsel for the fourth defendant submitted that the plaintiff had assigned all his rights including sound recording rights, publishing rights, public performance rights, etc., by letter of assignment dated 24.11.2007 in favour of his wife. On the very same day, the wife of the plaintiff executed two agreements in favour of the fourth defendant, namely, sound recording licence agreement and sub-publishing agreement. These agreements were executed by the wife of the plaintiff for a period of ten years. That apart, the plaintiff's wife has given two separate letters of authorisation in favour of the fourth defendant, both dated 24.11.2007, authorising the fourth defendant to file a complaint, prepare and sign all documents including statutory declaration, give evidence in court and all other matters incidental thereto. These agreements, namely Sound Recording Licence Agreement and Sub-publishing agreement and letter of authorisation, were completely suppressed in the plaint. Similarly, in the plaint, the plaintiff has stated that the plaintiff has not received any royalty; the same is not correct. But, the plaintiff by suppressing all these facts filed the suit, as if the fourth defendant has illegally and without any right, exploited the copyright of the plaintiff. Since the order of injunction was obtained suppressing all these documents, the plaintiff is not entitled for continuation of injunction and the same is liable to be vacated.

16. In support of his contention, the learned counsel for the fourth defendant has relied upon the following judgments:

(i) In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, the Supreme Court held that a litigant who approaches the court is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the court as well as on the opposite party.

(ii) In the judgment rendered by the Supreme Court in Appeal (Civil) No. 3827 of 2007 on 20th August 2007 in the case of *Prestige Lights Ltd. vs. State Bank of India*, it has been held that when a party approaches a Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ court may refuse to entertain the petition and dismiss it without entering it.

(iii) In *Manohar Lal (D) by LR. vs. Ugrasen (D) by LR. and others* in Civil Appeal No. 973 of 2007 dated 3rd June, 2010, the Hon'ble Supreme Court has held as follows:

"46... The fact of illegal allotment of land in commercial area has been brought to the notice of the court first time vide affidavit of the Vice Chairman, GDA dated 27.5.2010. Thus, it is crystal clear that such facts had not been brought on record before the High Court by GDA at any stage in any of the writ petitions nor it had been pointed out to the State Government.

47... When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the court not only with clean hands but also with clean mind, clean heart and clean objective. "Equally, the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice." Who seeks equity must not do equity. The legal maxim "*Jure naturae aequum est nemini cum alterius detrimento ex injuria fieri locupletiores*" means that it is a law of nature that one should not be enriched by the loss or injury to another."

49. Such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court. A litigant is bound to make "full and true disclosure of facts"..

50... this Court held that whenever the court comes to the conclusion that the process of the court is being abused, the court would be justified in refusing to proceed further and refuse relief to the party."

(iv) In the case of *M/s. Seemax Construction (P) Ltd., vs. State Bank of India and another*, vide order dated 12th December 1991, the Delhi High Court has held as follows:

"12. The tendency of the litigants to approach different courts to somehow or the

other obtain interim orders without full disclosure of the earlier judicial proceedings and without full disclosure of all material facts is on constant increase and it is necessary for due administration of justice to reiterate the legal proposition that such a person may be refused a hearing on merits. As the plaintiff, as noticed above, has suppressed material facts from this court, I would dismiss this application without going into the merits" "

17. Thus, by relying upon the dictum laid down in the above judgments, the learned counsel for the fourth respondent submitted that since the plaintiff has suppressed the material facts by not producing all the documents, he is not entitled for injunction. Thus, according to the learned counsel for the fourth defendant, the interim injunction is liable to be vacated.

18. With regard to the merits of the case, it is submitted by the learned counsel for the fourth defendant that though the assignment was made by the plaintiff in favour of his wife on 24.11.2007 without mentioning any specific period, the wife of the plaintiff by two agreements, namely Sound Recording Licensing Agreement and Sub-Publishing Agreement granted licence in favour of the fourth defendant for a period of ten years. The details of movie titles and Tracks listing owned by the plaintiff, which were assigned to his wife were mentioned in Annexure "A", which is common to both agreements. This Annexure "A" was signed by the wife of the applicant/plaintiff and the fourth defendant. Subsequently, Annexure "A" was made in the form of CD, which was signed by the plaintiff, his wife and the fourth defendant. To provide all the contents of the film songs in the Hard Disc format, the addendum was signed by the wife of the plaintiff on behalf of the plaintiff and the hard disc was signed by the plaintiff, his wife and the fourth defendant. The list of songs contained in the hard disc was also prepared and in each page of the list of songs, it was signed by the plaintiff. By signing on the list of songs in each page, on the label of Hard Disc and on the CD, the plaintiff had himself become a party to the agreement. Thus, he is directly a party to the contract for a period of 10 years. Since the plaintiff had signed the CD and Hard Disc and the list of songs, he ratified the agreement dated 24.11.2007 in favour of the fourth defendant.

19. The learned counsel for the fourth defendant further submitted that in both the agreements dated 24.11.2007 signed by the plaintiff's wife, it was mentioned that royalty amount shall be paid to the plaintiff. Thereafter, the plaintiff has also received the royalty benefits from 2007 onwards. Thus, by receiving the amount of royalty, the plaintiff further ratified the agreements impliedly. Therefore, the case of the plaintiff that his wife Jeevaraja acted without authority in granting 10 years right to the fourth respondent, is not legally sustainable.

20. In this regard, the learned counsel for the fourth defendant by inviting the attention of this Court to Section 196 of the Contract Act, submitted that under Section 196 of the Contract Act, a person is having a choice either disown or ratify the act done by another person on behalf of him without his authority. In

this case, the plaintiff has not chosen to disown, reject or deny the licence agreement executed by his wife in favour of the fourth defendant. On the contrary, he had signed the CD, hard disc, list of the movies and thus, he ratified the agreements expressly. By receiving royalties, he impliedly ratified the said agreements. As per Sections 196 and 197 of the Contract Act, when one part of contract is ratified, it would amount to accepting the whole contract and ratifying it. The effect of such express and implied ratification is that it is as if they had been performed by his authority. Thus, the applicant/plaintiff himself becomes the party to the agreement dated 24.11.2007 executed by his wife in favour of the fourth defendant by ratification. Therefore, he has full authority as the owner of all copyrights to give 10 years or 15 years or even longer periods as licence to fourth defendant. Hence, when the rights are derived directly from the plaintiff by ratification, there is no limit on the period of agreement. Only Jeevaraja, the wife of the applicant/plaintiff, may have rights only for five years.

21. In this regard, the learned counsel for the fourth defendant has relied upon the judgment in M.C.S. Rajan and Company Vs. National Nail Industries and Others, , wherein it has been held as follows_

"4....Sections 196 and 199 of the Indian Contract Act make it clear that an act done by one person on behalf of another, but without his knowledge or authority, may be ratified by that order and if that order so elects to ratify, the same effect will follow as if the act was performed by that other..

5. Even so, Section 199 of the Indian Contract Act says that a person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act forms a part. Even, as we said if the contention of the defendants is accepted for argument"s sake, that there was an irregularity in the transaction when Mr. Naryanan presented the plaint, such an irregularity has been cured by the express ratification."

Thus, by relying upon the said judgment, the learned counsel for the fourth defendant submitted that the said judgment supports the case of the fourth defendant and rejects the argument of the plaintiff.

22. The learned counsel for the fourth defendant has also relied upon the judgment reported in G. Vasantha Pai Vs. Special Commissioner and Commissioner (Land Reforms) Chepauk, Madras-5 and another, , in support of his contention that though the original assignment was made by the plaintiff in favour of his wife for a period of five years, subsequently the plaintiff by receiving the royalty under two agreements dated 24.11.2007 executed by his wife in favour of the fourth respondent, ratified the whole contract including the period of ten years mentioned in the two agreements. The relevant portion of the said judgment is as follows:

"14.. That Sections 196 to 199 of the Contract Act deals with ratification as to the acts done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratifies them, the

same effects will follow as if they had been performed by his authority. Ratification can be express or implied from conduct and it will be held adopted throughout. Ratification, if effective at all, relates back to the date of the act ratified.."

23. Thus, by relying upon the above Judgment, the learned counsel for the fourth defendant submitted that the plaintiff accepted one clause of royalty by accepting the royalty amount; at the same time, now he is rejecting another clause for a period of ten years by saying that since the original assignment was given in favour his wife only for a period of five years, as per Section 19(5) of Copyrights Act, the licence granted by her wife in favour of the fourth defendant can not be for ten years. Thus, the plaintiff wants to approbate the royalty clause but reprobate the "ten years" clause in the very same agreement dated 24.11.2007. Such conduct is not permissible as held by the Hon'ble Supreme Court in M/s. Cauvery Coffee Traders, Mangalore vs. M/s. Hornor Resources (Intern.) Co. Ltd., in Arbitration Petition Nos. 7 and 8 of 2009 dated 13.09.2011, wherein it has been held as follows:

"25. In R.N. Gosain Vs. Yashpal Dhir, , this Court has observed as under:

"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage.

26. A party cannot be permitted to "blow hot and cold", "fast and loose"" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however it must not be applied in a manner as to violate the principles of right and good conscience....

27. Thus, it is evident that the doctrine of election is based on the rule of estoppel-the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity..."

24. For the same proposition, the learned counsel for the fourth defendant has also relied upon another judgment of the Supreme Court in R.N. Gosain A vs. Yeshpal Dhir in SLP (C) No. 4325 of 1992 dated 23.10.1992, wherein the Supreme Court held as follows:

"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only

be entitled on the footing that it is void for the purpose of securing some other advantage"....

... According to Halsbury's laws of England, 4th Ed., Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside"...

25. Thus, the learned counsel for the fourth defendant submitted that the plaintiff has ratified the contract by receiving the royalties; hence, he cannot say that the licence agreement was only for a period of five years. Since the licence agreement executed by the wife of the plaintiff in favour of the fourth defendant is for a period of ten years, the same is binding on the plaintiff as he ratified the contract by receiving royalty under the said agreement. Hence, his conduct of trying to take away the rights of the fourth defendant before 24.11.2017 is illegal and invalid. Hence, the plaintiff is not entitled for injunction. Thus, the fourth defendant sought for dismissal of the injunction applications.

26. By way of reply, the learned counsel for the plaintiff submitted that it is incorrect to state that the plaintiff has suppressed the material facts in the plaint. In fact, in the plaint, in paragraph No. 4, the plaintiff had stated that the act of the defendants was questioned by the plaintiff and the defendants had resorted to legal proceeding with forged and invalid documents projecting the same as documents for them to use the musical work absolutely. The "legal proceeding" mentioned in the said paragraph in the plaint is only referred to C.S. No. 308 of 2013. Except C.S. No. 308 of 2013, no other legal proceeding is pending between the plaintiff and the defendants. Similarly it is equally incorrect to state that the plaintiff had suppressed all the agreements. In fact, in the very same paragraph, viz., paragraph No. 4 of the plaint, the plaintiff had stated that the defendants 2 to 4 approached the plaintiff for exploitation of musical work and the same were granted in favour of the fourth respondent. The said averment made in the plaint is only with regard to the sound recording licence agreement and sub-publishing agreement, both dated 24.11.2007. The learned counsel for the applicant/plaintiff further replied that though specific dates were not given, all the material facts were mentioned in the plaint. Therefore, it is futile on the part of the fourth defendant to contend that the suit is to be dismissed for suppression of material facts.

27. Further, the learned counsel for the plaintiff submitted that when the assignee of the plaintiff herself had the terms of assignment of five years, the assignee of the plaintiff cannot grant any assignment or licences beyond the period for which she was entitled to. Therefore, all the agreements and licences have become invalid documents after 24.11.2012. In fact, in paragraph No. 4 of the plaint, the plaintiff had stated the defendants had resorted to legal proceedings with forged and invalid documents projecting the same as document for them to use the musical work. Thus, the learned counsel for the plaintiff submitted that all the necessary facts, which are essential for granting injunction, were mentioned in the plaint and absolutely there is no suppression of

material facts. In this regard, the learned counsel for the plaintiff by relying upon the judgment of the Hon'ble Supreme Court reported in Harkirat Singh Vs. Amrinder Singh, submitted that if material facts are pleaded in the plaint that would suffice; the particular and details of the said facts can be stated during the course of adducing evidence.

28. The learned counsel for the plaintiff further submitted that at the time of obtaining interim order, the plaint in C.S. No. 308 of 2013 and all the documents, which are necessary for grant of injunction, were furnished to this Court. Only after the perusal of the said document, interim order was granted. Therefore, it cannot be said that there is suppression of material facts. The learned counsel for the plaintiff, by relying upon the judgment reported in Harkirat Singh Vs. Amrinder Singh, submitted that all the material facts were given in the plaint; therefore, according to the learned counsel for the plaintiff, the submission of the learned counsel for the fourth defendant that the applications seeking interim injunction are liable to be dismissed for suppression of material facts, cannot be countenanced.

29. With regard to the submission made by the learned counsel for the defendants that by the conduct of receiving royalties and signing the CDs and hard discs, the plaintiff has ratified the original contract, it is replied by the learned counsel for the plaintiff that the signature found in the Addendum dated 6.1.2010 is not that of the signature of the plaintiff's wife Jeevaraja. On mere perusal of the signature found in the Addendum dated 6.1.2010 and the Licence Agreement dated 24.11.2007 signed by Jeevaraja, it is patently evident that the signature found in the Addendum dated 6.1.2010 is a rank forgery.

30. Similarly, the learned counsel for the plaintiff also denied the signatures found in the pages 2 to 103 of the additional typed set of papers with list of songs, which purported to have contained the plaintiff's signature, is a rank forgery. In this regard, the learned counsel for the plaintiff filed an additional affidavit dated 17.12.2014 stating that the signature of his wife found in the Addendum dated 6.1.2010 as well as alleged signatures of the plaintiff found in the list of songs from pages 2 to 103 in the additional typed set of papers are rank forgery.

31. Though the learned counsel for the plaintiff has admitted the signature found in the CD Rom format, it is his submission that the signature in the C.D. Rom format will not lead to the conclusion that the plaintiff is a party to the licence agreement. With regard to the signature found in the hard disc, the learned counsel for the plaintiff submitted that the hard disc is prepared from the master recording furnished along with the licence agreement dated 24.11.2007 and the labels contained therein were furnished to Jeevaraja at the time when the assignment document was given to Jeevaraja. Therefore, the signature found in the hard disc or C.D. Rom format, as mentioned in the licensing agreement dated 24.11.2007, has no value at all. In any event, according to the learned counsel for the plaintiff, it cannot be construed as one ratifying the licence agreement

dated 24.11.2007.

32. With regard to the submission of the learned counsel for the fourth defendant that since the plaintiff has received the royalty, it would amount to impliedly ratifying the contract, the learned counsel for the plaintiff submitted that the licence agreement dated 24.11.2007 is only an authorization given by Jeevaraja to pay royalty to the plaintiff. The plaintiff's wife was the absolute owner of copy right pursuant to the agreement dated 24.11.2007 for a period of five years. The plaintiff has received the royalty for a period of five years. Hence, it cannot be at all stated by any stretch of imagination that receipt of royalty pursuant to the licence agreement dated 24.11.2007 will amount to ratification of the transaction. It should be noted that for a period of five years from 24.11.2007, the plaintiff has no right and it is only on the expiry of the period of five years, copyright will revert back to the plaintiff and the plaintiff is entitled to exploit the rights only after expiry of the period of five years. In fact, the plaintiff has not renewed the contract after the expiry of five years. Therefore, the question of applying principle of Section 196 of the Contract Act will not arise and the judgments relied on by the fourth defendant under Section 196 of the Contract Act, cannot be made applicable to the facts of this case.

33. Further, the learned counsel for the plaintiff submitted that the plaintiff is not receiving the royalty after 2012, but the fact remains that the fourth defendant has not paid the royalty regularly from 2007 to 2012. This fact was clarified in the reply filed by the plaintiff. Thus, the learned counsel for the plaintiff prayed for making the order of interim injunction absolute.

34. The learned counsel for the fifth defendant made his submissions, supporting the case of the fourth defendant.

Submissions made by the counsel for the 2nd defendant on the application for rejection of the plaint.

35. With regard to the rejection of the plaint, the learned counsel for the second defendant submitted that the suit is not maintainable as against the second defendant. The entire suit is based on the assignment, which is alleged to have been executed by the plaintiff to his wife and his wife in turn has executed another agreement to the fourth defendant titled as agreement for sound recording. The plaintiff cannot be the owner of the sound recording at all with regard to cinematograph films. Section 2(d) of the Copyright Act defines "author". As per Section 2(d)(v) of the said Act, as regards a "cinematograph film or sound recording", the producer is the author for the purpose of this Act. Hence, the plaintiff does not have any right whatsoever over the claims made in the plaint. In the light of Section 2(d)(v) of the Copyright Act, the claim of the plaintiff that he is the sole and absolute owner of the right in respect of the musical works, sound recording, contained in the films as well as the independent artistic composer, is nullified. Therefore, he has no cause of action at all as against the second defendant, since the second defendant company had

obtained right from the producers of the respective films.

36. The learned counsel for the second defendant further submitted that under the Copyright Act, Cinematograph film is defined under Section 2(f) of the Act. As per Section 2(f), cinematograph includes sound recording and musical works. The entire plaint allegations pertain only film/cinema songs. The plaintiff has suppressed the distinction between two rights under Section 2(xx) for sound recording and Section 2(p) of the Copyright Act for musical work. These two rights would clearly show that the rights are vested in different persons. Sound recording means recording of sounds, whereas "musical work" consists of music. In common parlance, the tunes, musical notes etc., belong to the composer/music director, whereas the recordings belong to the producers. The plaintiff does not sell any audio Cassettes/compact discs/DVDs., etc., of songs of the movies which would be sound recordings. In fact, the plaintiff has also been paid remuneration by the producers of the movies for composing music for the films, which shows that the plaintiff as an author of musical work has composed music only based on the contract. So far as sound recording is concerned, the producer of the film is the author and in relation to musical work, the composer is the author. Section 14(a) of the Copyright Act defines the exclusive rights over "musical work" and Section 14(e) of the Act defines the exclusive rights over "sound recording". In all the films, sound recording includes the songs with words, for which the producer is the author. The plaintiff, who cannot be the owner of the sound recording, cannot file a suit claiming rights at all, which is barred by Copyright law.

37. Further, the second defendant who has obtained the original rights from the producers cannot be deprived of their copyright. The second defendant had over 500 agreements with different producers for various films. The said copyright agreements give the second defendant the exclusive right to market and exploit the sound recordings of the respective films. The present suit and applications are filed against five different entities without showing the nexus or connection between them and the relief sought for in the plaint. The second defendant does not have any role to play in the activities of other defendants. However, the second defendant denies that the plaintiff is the sole and absolute owner of the right in respect of musical works, sound recording contained in the films as well as in the independent artistic composer, as the same would vests only with the producer. The plaint and the injunction applications are silent as to the agreements which the plaintiff had with each of the individual producers mentioned in the plaint schedule movies. Unless the said agreements are produced and the extent of the rights pleaded, the plaintiff cannot be the owner of the copyright. The second defendant has also denied that they are assigning any right to third parties, as if they are holding valid rights. The agreements of the second defendant with the producers cannot be questioned by the plaintiff, unless they contravene any of the agreements between the plaintiff and the second defendant. Copyright over the schedule film songs or sound tracks only vests with the producer and not to the music director. The plaintiff has no cause

of action to file a suit against the second defendant. In support of his contentions, the learned counsel for the second defendant has relied upon the judgment of the Delhi High Court in *Indian Performing Right Society Ltd. Vs. Aditya Pandey and Others*, wherein it has been held as follows:

"15. The complex issue which arises for consideration before us is: Whether the communication to the public, including by way of broadcasting of a sound recording also amounts to a communication to the public of literary and musical works embodied in the sound recording under the Copyright Act, 1957 post the said Act being amended by the Copyright (Amendment) Act, 1999? If yes: Whether a separate licence in respect of such literary and musical works can be asserted by the owner of copyright in such works in addition to the licence secured from the copyright holder in the sound recording?

48. The matter does not rest here. The aforesaid material difference in the rights enjoyed by the owner of copyright in sound recording in India and UK helps to resolve the controversy in the present case. The communication of a sound recording (derivative work) to the public results in exploitation of literary and musical works (original works). Had the intention of Indian legislature been that the owner of a sound recording (derivative work) should not communicate the sound recording to the public without obtaining the prior authorization of the owner of the copyright in literary and musical works (original works) or that 2 permissions had to be obtained, it should have specifically manifested such intention in the Copyright Act, 1957, as has been manifested the legislature in the United Kingdom in the CDP Act, particularly when CDP Act, 1988 prohibits the owner of copyright in sound recording from communicating the sound recording to the public stood enacted, at the time when provision relating to copyright in sound recording was amended in India in the year 1994."

38. The learned counsel for the second defendant further submitted that there is distinction with regard to musical works and sound recording and as per the aforesaid judgment, the owners of the sound recording need not obtain any licence from the owners of the musical works to exploit the same. Two rights are operating in two different areas. Thus, the learned counsel for the second respondent submitted that no case has been made out and there is no cause of action against the second defendant and the plaint is liable to be rejected as against the second defendant.

39. Per contra, the learned counsel for the plaintiff submitted that the plaint can be rejected only if the averments in the application seeking rejection of the plaint, falls under Order 7 Rule 11 of CPC, which reads as follows_

"11. Rejection of plaint: The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by this Court, fails

to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) Where the suit appears from the statement in the plaint to be barred by any law.

40. It is the case of the plaintiff that he is having the right over the sound recording. In support of his contention, the learned counsel for the plaintiff has also invited the attention of this Court to the letter dated 04.10.1988 sent by the second defendant to the plaintiff enclosing the cheque for royalty amount. According to the learned counsel for the plaintiff, the said letter would show that the plaintiff is having right over sound recording. Whether the second defendant is entitled to exploit sound recording or not is to be decided only during the course of trial.

41. In this regard, the learned counsel for the plaintiff also drew the attention of this Court to the following judgments:

- i) Harkirat Singh Vs. Amrinder Singh,
- ii) Popat and Kotecha Property Vs. State Bank of India Staff Association,
- iii) M/s. Ferdous Finance (P) Ltd. Vs. R. Thyagarajan, A.V.K. Umapathy, V. Sowrlajan and M/s. Jeez Impex (P) Ltd.-->

Thus, he prayed for dismissal of the application seeking rejection of plaint.

42. In view of the submission of the learned counsel for the respective parties, the following points arise for consideration.

- 1) Whether there is suppression of material facts in the plaint?
- 2) Whether the validity of the two agreements dated 24.11.2007 executed in favour of the fourth defendant is for a period of five years or ten years?
- 3) Whether the act of the plaintiff in signing the CD containing the film songs and the hard disc and Annexure A/film songs and receiving the royalties, would amount to ratifying the entire contract under Section 196 of the Contract Act?
- 4) Whether the plaintiff is entitled for injunction?
- 5) Whether the plaint is liable to be rejected as against the second defendant?

Point No. 1:-

43. With regard to suppression of facts, it is submitted by the learned counsel for the fourth defendant that the plaintiff had assigned all his rights including sound recording right, publishing right, public performance right, digital media right,

new media right, collar tunes, ring tone right, true tone right, rights and interests in the musical composition created by him in favour of his wife Jeevaraja, on 24.11.2007. On the very same day, the plaintiff's wife executed two agreements, viz., sound recording licence agreement and sub-publishing agreement, in favour of the fourth defendant for a period of ten years to manufacture, sell and distribute music products in the format of CDs, DVDs, Cassettes etc. Though in the assignment executed by the plaintiff in favour of his wife, no specific period was mentioned, in the subsequent agreements executed by the wife of the plaintiff in favour of the fourth defendant, licence period was mentioned as ten years. But, these agreements were not stated in the plaint. That apart, the plaintiff and his wife have executed a letter of authorization in favour of the fourth defendant on 24.11.2007 to file a complaint, prepare and sign all documents including statutory declaration, give evidence in court and all other matters incidental thereto. This letter of authorization was also suppressed in the plaint. Covering both the agreements viz., sound recording licence agreement and sub-publishing agreement, Annexure A was prepared containing the list of films. Subsequently, the addendum was prepared for converting C.D. form into hard disc. This Addendum was signed by the plaintiff's wife and the fourth defendant. The list of film songs contained in pages 2 to 103 of the additional typed set of papers was signed by the plaintiff. But, these documents were suppressed in the plaint. Therefore, the plaintiff is not entitled for injunction. According to the learned counsel for the fourth defendant, had all these documents been brought to the notice this Court, this Court would not have granted interim injunction. In support of his contention, the learned counsel for the fourth defendant relied upon the judgment in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , and two other judgments referred to above and he prayed for vacating the interim order of injunction.

44. But, according to the learned counsel for the plaintiff, it is incorrect to state that there is suppression of material facts in the plaint. In fact, in the plaint, in paragraph No. 4, the plaintiff has stated as follows:

"..... the act of the defendants were questioned by the plaintiff and the defendants have resorted with legal proceeding with forged and invalid documents, projecting the same as documents for them to use the musical work is absolutely against law."

The only proceeding pending is the earlier suit filed by the fourth defendant in C.S. No. 308/2013. Even according to the plaintiff, all the agreements, namely Sound Recording Licence Agreement and Sub-publishing Agreement have become ineffective from 2012. Therefore, without mentioning the said agreements in detail, he had made a reference with regard to the said documents in paragraph 4 of the plaint. Therefore, all the material facts, which are necessary for granting interim injunction, was mentioned in the plaint. Moreover, the entire case of the plaintiff is based upon Section 19(5) of the

Copyright Act; since no specific period was mentioned in the assignment executed by the plaintiff in favour of his wife, the agreement shall be deemed to be for a period of five years from the date of agreement. All these facts were brought before the Court at the time of granting interim injunction.

45. As regards the question as to whether there is suppression of material fact or not on the part of the plaintiff, at the outset, it would be appropriate to see the interim order granted by this Court. The relevant portion of the interim order passed by this Court dated 25.09.2014 reads as follows:

"4. Learned Senior Counsel further contended that being a very notable Music Director, he has composed the music relating to list of movies, for which, he is the owner of the Copyright and as per Section 19(5) of the Copyright Act and 1957, even an assignee cannot claim rights for more than five years. Section 19(5) of the Copyright Act, 1957, reads as follows:

"19(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment."

5. The applicant has stated in his affidavit that he has composed music for more than 4500 songs, since late 1970s and he is the only composer in the history of cinema to provide film scores for over 1000 films and which, played a very crucial role in the success of many Tamil films. It is further submitted that the applicant, music Director, introduced folk in Tamil with western musical sensibilities into the South Indian musical main stream and he has won four Indian National Awards, a highest film Honour in India and he is a recipient of "Padma Bhushan" Award by Government of India. He has been conferred with the title of Isaigani (Musical Genius) and also Maestro and various other awards only by his sincere, dedicated hardwork with his exemplary intelligentsia in the field of music. However, the same is illegally being exploited by the respondents, against law.

6. Mr. AR.L. Sundaresan, learned Senior Counsel drew the attention of this Court to copy of the plaint relating to the suit in C.S. No. 308 of 2013 filed by the fourth respondent herein, impleading the applicant/plaintiff as one of the defendants. However, there was no interim order granted in favour of the fourth respondent herein.

7. Learned Senior Counsel further drew the attention of this Court to the averments made in the copy of the plaint relating the said suit, wherein it was not disputed by the fourth respondent, plaintiff in the said suit, that the applicant/plaintiff is the owner of the Copyright relating to the music composed by him. However, it was stated by the fourth defendant, as if he has copyright of the songs composed by the applicant, through the wife of the applicant/plaintiff, who died on 24.11.2007. However, no supporting document was filed and further, as argued by the learned Senior Counsel, it could be construed under Section 19(5) of the Copyright Act, 1957, even if there is any such right, that would be for five years from the date of such assignment. The applicant/plaintiff has not admitted

the copyright claimed by the fourth respondent through the deceased wife of the applicant. Even for the sake of arguments, without admitting the assignment, alleged to have been given by the deceased wife of the applicant, the same could have been expired even in the year 2012. On the aforesaid facts and circumstances, the respondents have no right to exploit the music composed by the famous Music Director who is the applicant/plaintiff herein against law.

8. Having gone through the averments made in the accompanying affidavit supporting materials and the submission made by Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the applicant/plaintiff, this Court is of the view that there is a prima facie case made out and the balance of convenience is also in favour of the applicant/plaintiff and if injunction is not granted, that may lead to irreparable injury to the applicant. On the aforesaid facts and circumstances, interim injunction is granted till 16.10.2014.

The applicant/plaintiff is directed to comply with the mandatory provisions under Order 39 Rule 3(a) of the Code of Civil Procedure."

46. From a perusal of the interim order passed by the learned Single Judge of this Court, I find that though no detailed particulars about the earlier suit filed by the fourth defendant in C.S. No. 308 of 2013 as against the plaintiff herein and another were stated in the plaint, at the time of moving the Interlocutory Application, a copy of the plaint in C.S. No. 308 of 2013 was produced by the learned counsel for the plaintiff before this Court. The said plaint contains the particulars about all the agreements entered into between the parties, which agreements, according to the 4th defendant, now plaintiff has suppressed in the present plaint. But, according to the learned counsel for the plaintiff, since all the agreements have become ineffective in the year 2012 itself, i.e., after the expiry of five years period from the date of agreements, he has made only a reference about the said agreements in the present plaint; but the particulars of the agreements were not mentioned in detail. However, absolutely there is no suppression of material facts in this case. In this regard, the learned counsel appearing for the plaintiff has relied upon the judgment reported in Harkirat Singh Vs. Amrinder Singh, . The relevant portion from the said Judgment is as follows_

"45. Section 77 speaks of election expenses and maximum amount which can be spent. Section 78 enjoins every candidate at an election to lodge account with the District Election Officer.

46. From the above provisions, it is clear that an election petition must contain a concise statement of "material facts" on which the petitioner relies. It should also contain "full particulars" of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as "the

Code") for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

47. All material facts, therefore, in accordance with the provisions of the Act, have to be set in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

48. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary" (Burton's Legal Thesaurus (3rd Edn.) p. 349). The phrase "material facts", therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

49. In the leading case of *Phillipps v. Phillipps Cotton*, L.J. stated:

"What particulars are to be stated must depend on the facts of each case. But in my opinion it is absolutely essential that the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial."

50. In *Bruce v. Odhams Press Ltd.*, Scott., L.J., referring to *Phillipps v. Phillipps* observed: (All ER P. 294)

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under RSC Order 25 Rule 4 (see *Phillipps v. Phillipps*); or "a further and better statement of claim" may be ordered under Rule 7."

51. A distinction between "material facts" and "particulars" however must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars" on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a

picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.

52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

A reading of the dictum in the above said judgment would show that a distinction between "material facts" and "particulars" must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars" on the other hand, are details of the case, which is in the nature of evidence a party would be leading at the time of trial.

47. From the materials on records, I find that in the present case, the plaintiff has made out a reference of the legal proceedings and the forged and invalid documents, though they are not mentioned in detail in the plaint. Therefore, averments made in the plaint satisfy the material facts. The details of the facts and the date of the agreement are all material particulars, which can be furnished at any point of time. In fact, in the present case, all the particulars were furnished to the fourth defendant at the time of hearing of the interlocutory applications and the learned single judge by considering the copy of the plaint filed in C.S. No. 308 of 2013, which contains particulars about all the agreements entered into between the parties and also by relying upon Section 19(5) of the Copyright Act, has granted interim order. Hence, I do not find any suppression of facts in the plaint. Only if any material facts, which are necessary for the purpose of formulating cause of action, are not stated in the plaint, it can be said that there is a suppression of material facts. In my considered opinion, non-mentioning of particulars or details of the earlier suit will not amount to suppression of facts.

Point No. 2:-

48. According to the plaintiff, the agreement of licence executed by his wife in favour of the fourth defendant is valid only for five years. But, according to the fourth defendant, the said licence is for a period of 10 years. It is an admitted case that the plaintiff has executed an assignment in favour of his wife, without mentioning any specific period. If no period of contract is mentioned, in terms of Section 19(5) of the Copyright Act, the period is only for a period of five years. In this regard, it would be appropriate to extract Section 19(5) of the Copyright Act, which reads as follows_

"19. Mode of assignment:...

....

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment"

49. The assignee Jeevaraja, plaintiff's wife, becomes absolute owner in terms of Section 18(2) of the Copyright Act. Therefore, the plaintiff's Jeevaraja is entitled to the rights, which the plaintiff has assigned, from the date of assignment, namely 24.11.2007. But, the wife of the plaintiff entered into licence agreement with the fourth defendant. The licence agreement stipulates that the fourth defendant is entitled to manufacture, sell and distribute the musical work under the non-exclusive licence. The difference between the assignment and licence is that insofar as assignment is concerned, the same transfers all the interests in the work in favour of assignee; whereas the licence is only creating a limited interest, retaining all other rights with the assignee. Without the licence agreement, the fourth defendant, if exploits the right, it will be a violation and the fourth defendant will be guilty of infringing the copyright. Since the right was given without mentioning the specific period, as per clause 19(5) of the Copyright Act, the period of assignment by the plaintiff in favour of his wife is only for five years. Though in the licence agreement executed by the plaintiff's wife in favour of fourth defendant, the period was mentioned as 10 years, in my considered opinion, in the instant case, since the plaintiff had assigned the right only for a period of five years in favour of his wife, the licence granted by the plaintiff's wife in favour of the fourth defendant should also be only for a period of five years and not for a period of ten years. Since the plaintiff's assignee Jeevaraja herself had assignment only for a period of five years, she cannot grant licence for more than a period for what she is entitled to.

Point No. 3:-

50. It is yet another submission of the learned counsel for the fourth defendant that since the plaintiff had signed the CD Rom formats and hard disc (schedule A and B) containing the list of film songs and also on the label of hard disc, the plaintiff impliedly ratified the licence agreement dated 24.11.2007 executed by his wife in favour of the fourth defendant. Similarly, by receiving the royalty under Clause 3 of the agreement, the plaintiff further ratified the said agreement expressly. The plaintiff's wife had executed an agreement for a period of 10 years; on account of the ratification of the said contract, the plaintiff himself has become a party to the said contract. It is further submission of the learned counsel for the 4th defendant that as per Sections 196 and 197 of the Contract Act, when one part of the contract is ratified, it would amount to accepting the whole contract and ratifying it; whereas in the instant case, the plaintiff accepts the royalty under Clause 3 of the agreement, but rejects the clause for a period of ten years in the same agreement dated 24.11.2007; the said conduct of the plaintiff is not permissible. In this regard, the learned counsel appearing for the fourth defendant has also invited the attention of this Court to Sections 196 and 199 of the Contract Act, which read as follows_

Section 196:-Right of person as to acts done for him without his authority: Effect of ratification_

Where acts done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Section 199:-Effect of ratifying unauthorised act forming part of a transaction_

A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Thus, by relying upon Sections 196 and 199 of Contract Act, the learned counsel for the fourth defendant submitted that though the plaintiff had a choice either to disown or ratify the act done by his assignee on behalf of him without his authority, the plaintiff has not chosen to disown, reject or deny the licence agreement executed by his wife in favour of the fourth defendant; on the contrary, he had signed the CD, hard disc, list of the movies; thus, he ratified the agreements dated 24.11.2007 expressly. As such, the plaintiff has directly become a party to the contract for ten years and hence, he is not entitled for injunction as against the defendants as stated supra. In this regard, the learned counsel for the fourth defendant has also relied upon catena of decisions referred to above under Sections 196 and 199 of Contract Act.

51. But, according to the learned counsel for the plaintiff, the signature found in the Addendum dated 06.01.2010 is not that of the signature of the plaintiff's wife Jeevaraja. Similarly, the signatures found in pages 2 to 103 of the additional typed set of papers with list of songs, are not that of the plaintiff and they are forged signatures. In fact, the learned counsel for the plaintiff has filed an affidavit dated 17.12.2014 to that effect. Further, according to the learned counsel for the plaintiff, the signatures found on the label of the Hard Disc and receipt of the royalty would not amount to ratifying the contract; therefore, the submissions made by the learned counsel for the fourth defendant based on Sections 196 and 199 of the Contract Act, have absolutely no relevance to the issue involved in this case.

52. In my considered opinion, as soon as the owner of the copyright assigns his right in favour of another person, his right would be lost and he would lose the status of the owner of the copyright. In the instant case, on 24.11.2007, the plaintiff has assigned his copyright in favour of his wife Jeevaraja. Thereafter, the assignee Jeevaraja, wife of the plaintiff, has become absolute owner of the copyright in terms of Section 18(2) of the Copyright Act. Once the plaintiff loses the status of owner of the copyright, the subsequent act of the plaintiff's signing on the label of Hard Disc and receipt of royalty, certainly will not ratify the original assignment dated 24.11.2007 executed in favour of his wife. In my considered opinion, when the plaintiff himself did not have any copyright over his work after execution of the assignment in favour of his wife, it cannot at all be stated by any stretch of imagination that either receipt of royalty or signing on

the CD format and Label of the Hard Disc, would go to the extent of ratifying the original assignment deed dated 24.11.2007. In the instant case, since no specific period was mentioned in the original assignment deed, as per Section 19(5) of the Copyright Act, the period of assignment should be only for five years. Though in the subsequent licence agreement dated 24.11.2007 executed by the assignee Jeevaraja in favour of the four defendant the period of agreement was mentioned as ten years, absolutely, the period mentioned in the subsequent licence agreement has no significance. In fact, as the assignee, the plaintiff's wife is entitled to authorise any person to receive the royalty. Incidentally, in the instant case, the assignee had authorised the plaintiff himself, who was the original owner of the copyright, to receive the royalty. Since the plaintiff had received the royalty under the licence agreement dated 24.11.2007, it does not mean that the act of receiving the royalty would amount to ratifying the original contract. In fact, the plaintiff is not the signatory either to the licence agreement dated 24.11.2007 or sub-publishing agreement dated 24.11.2007 or the addendum dated 06.01.2010. The plaintiff had signed only just on the CD Rom Format and on the label of Hard Disc, which contains the names of the film and film songs. Therefore, the submission made by the learned counsel for the defendants, by placing reliance on Sections 196 and 199 of Contract Act cannot be made applicable to the facts of this case, because in the instant case, entire right emerges out of the provisions of the Copyright Act. Therefore, Sections 196 and 199 of Contract Act has no relevance in this matter and the same cannot be made applicable to the facts of this case. Hence, the catena of decisions relied upon by the learned counsel for the defendants based on Sections 196 and 199 of Contract Act, have no application to the facts of this case.

53. Further, Sections 196 to 199 are found in Chapter X of the Indian Contract Act under the heading "agent". The relationship of an agent and a principal is required so as to make the Sections 196 to 199 of the Contract Act applicable. In the instant case, the said Jeevaraja, wife of the plaintiff, is the principal and the plaintiff was not the agent of Jeevaraja at any point of time. The said Jeevaraja, in her capacity as the assignee, has signed the document stipulating ten years period when, in fact, she had only five year period as per the letter of assignment dated 24.11.2007. Since the assignee is entitled to exploit the rights for a period of five years, the plaintiff becomes as third party and he had no right over his musical work for a period of five years from 23.11.2007. Therefore, it cannot be said that the plaintiff ratified the action of the assignee in respect of the license agreement entered into by Jeevaraja with fourth defendant. Further, in the instant case, the plaintiff has stopped receiving the royalty exactly on the date of expiry of five years period from the date of agreement.

54. Though a submission was made by the learned counsel for the fourth defendant, in particularly, referring the letter dated 12.7.2011 addressed by the plaintiff to the Indian Performing Society, wherein the plaintiff has asserted that all the rights including copyright, publishing right and composer right are with him and the publishing right for his compositions are also belong to him and he

appointed the fourth defendant as sub-publisher to administer all the works of the plaintiff, I am of the opinion that the authorization given to the fourth respondent by the said letter is only to register all his works with the Indian Performing Right Society Limited on behalf of the plaintiff. It is only the administrative power given to represent the plaintiff before the Indian Performing Right Society and the said document cannot be construed either as granting any exploitation right to the fourth defendant or ratifying the licence agreement dated 24.11.2007 and the alleged sub-publishing agreement dated 24.11.2007 and the addendum dated 6.1.2010.

Point No. 4:-

55. It is yet another submission of the learned counsel for the fourth respondent that since the suit has been filed by the plaintiff for damages, the plaintiff is not entitled for grant of injunction. In this regard, the learned counsel for the fourth defendant relied upon the judgment reported in Multichannel (India) Limited Vs. Kavitalaya Productions Pvt., Limited, 17-A Karpagambal Nagar, Mylapore, Chennai-4 and two others, , wherein it has been held that an injunction will not be granted where the plaintiff has a remedy by way of damages.

56. But, the learned counsel for the plaintiff submitted that even under Section 55 of the Copyright Act, the plaintiff can claim all remedies like injunction, damages, etc. Section 55 of the Copyright Act is extracted hereunder:

"55. Civil remedies for infringement of copyright:

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts as are or may be conferred by law for the infringement of a right.

57. In view Section 55 of the Copyright Act, I am of the opinion, that the plaintiff is entitled to claim both the reliefs viz., damages and injunction. Therefore, the submission made by the learned counsel for the fourth defendant in this regard cannot be accepted.

58. For the foregoing reasons, I find that there is a prima facie case in favour of the plaintiff. Hence, the O.A. Nos. 760 to 762 of 2014 are allowed as prayed for and the injunction already granted by this court vide order dated 25.09.2014, is made absolute. Similarly, Application Nos. 7701 of 2014 is also allowed as prayed for.

Application No. 6795 of 2014- to reject the plaint:-

Point No. 5:-

59. With regard to rejection of the plaint, it is the submission of the learned counsel for the second defendant that sound recording and musical works are two different rights and the two rights are operating in two different areas. The present suit is filed based on the claim that the plaintiff is the sole and absolute

owner of the right in respect of the musical works, sound recording, contained in the films as well as the independent artistic composer. In the light of Section 2(d) (v) of the Copyright Act, the claim of the plaintiff is nullified. Therefore, he has no cause of action at all as against the second defendant, since the second defendant company had obtained right from the producers of the respective films. The second respondent had over 500 agreements with different producers for various films. The said copyright agreements give the second defendant the exclusive right to market and exploit the sound recordings of the respective films. Copyright over the schedule film songs or sound tracks only vest with the producer and not to the music director. The plaintiff has no cause of action to file a suit against the second defendant.

60. But, the learned counsel for the plaintiff denies the contentions of the learned counsel for the second defendant, stating that by resorting to the letter dated 4.10.1988 sent by the second defendant to the plaintiff, the second respondent has paid the royalty to him in respect of sound recording right. Since the second defendant has raised the issue belatedly, the submission made by the learned counsel for the second defendant will not serve as a ground for rejection of the plaint.

61. But, on a perusal of averments made in the plaint, I find that a case has been made out as against the second defendant and there is cause of action to maintain the suit as against the second defendant. All the grounds raised by the 2nd defendant is only his defence and the same can be considered only at the time of trial. The ground raised by the learned counsel for the 2nd defendant will not server as a ground for rejection of the plaint. Hence, Application No. 6795 of 2014 is liable to be dismissed and accordingly, the same is dismissed.

In the result, Original Application Nos. 760 to 762 of 2014 are allowed as prayed for and Application No. 7701 of 2014 is also allowed as prayed for. Application No. 6795 of 2014 is dismissed.