

**(2011) 12 DEL CK 0324**

**In the Delhi High Court**

**Case No :** Regular First Appeal (OS) 32 of 2010

Indian Performing Right Society Ltd.

APPELLANT

Vs

Badal Dhar Chowdhry and Others

RESPONDENT

---

**Date of Decision :** 22-12-2011

**Acts Referred:**

Copyright Act, 1957 — Section 51(a)(ii), 52A, 55

**Citation :** (2012) 129 DRJ 490

**Hon'ble Judges :** S.P. Garg, J; Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** Parveen Anand and Ms. Geetanjali, for the Appellant; Somnath Mukherjee, Advocate and Ms. Nandita Das, Advocate for R-2 and R-3, for the Respondent

**Final Decision :** Disposed Off

---

## **Judgement**

1. Vide impugned order dated 05.04.2010, appellant's suit seeking to restrain defendant No. 1, proprietor of Calcutta Music Conference, to organize public performances and communicate musical works by live performance or by playing recorded musical works without obtaining the necessary permission from the appellant; and to restrain Calcutta Improvement Trust, defendant No. 2, working under the aegis of defendant No. 3, the State of West Bengal, to let on hire any auditorium owned by said defendants and permit public performance of the works licensed to the appellant unless the hirer obtains a permission from the appellant, has been dismissed by the learned Single Judge holding that the Delhi High Court would not have any territorial jurisdiction to entertain the plaint. Learned counsel for the parties state that the decision of a learned Single Judge in an earlier suit on the same issue, resulted in a finding that Courts at Delhi would not have territorial jurisdiction where injunction prayed for relates to performances outside territorial limits of Delhi was upheld by a Division Bench of this Court and the matter is currently pending consideration before the Supreme Court.

2. Thus, as of today we are bound to hold that the impugned decision passed by the learned Single Judge is correct.

3. However, with reference to the legal provisions attracted on the facts of the instant case, we have asked learned counsel for respondents No. 2 and No. 3 i.e. the State of West Bengal and its instrumentalities, whether the State or its instrumentalities can permit violation of law, to which the answer rightly given by learned counsel for respondents No. 2 and No. 3 is that, no State can ever tell a Court that it would permit law to be violated.

4. The appellant, IPRS is a society established to protect the rights of its members comprising of authors, composers and publishers of literary and/or musical works as well as to protect the interest of other sister societies which are owners of copyright in literary and musical works. The grievance pertains to the said respondents letting on hire theatres, auditoriums or halls to respondent No. 1 who communicates to the public, without obtaining a licence and paying the licence fee to the appellant; either by way of live performance or by playing recorded music, the musical scores and songs, the copyright in the lyrics and the musical score whereof vests in the appellant and thereby causing injury to the members of the appellant or the appellant directly. Qua respondents No. 2 and No. 3, the appellant desires an injunction to prohibit them to let out any theatre, auditorium or hall belonging to them without obtaining from the hirer, documents evidencing a licence obtained by the hirer from the appellant with respect to lyrics or musical scores, copyright wherein belong to the appellant.

5. Learned counsel for respondents No. 2 and No. 3 states that said respondents do not know nor are they presumed to know the sound recordings, copyright whereof, in the underlying works is the property of the appellant, and thus learned counsel states that it has to be the individual responsibility of each person who publicly broadcasts or communicates to the public, a musical work; copyright whereof pertaining to lyrics and the musical score is the property of the appellant.

6. We have drawn the attention of learned counsel to Section 51(a)(ii) of the Copyright Act 1957 which states that copyright in a work shall be deemed to be infringed where any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under the Act or in contravention of the conditions of a licence so granted or of any conditions imposed by a Competent Authority under the Act permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of a copyright.

7. Learned counsel for respondents No. 2 and No. 3 concedes that said Section would certainly cast an obligation on the owner of a theatre or an auditorium or any other place where public can be seated, to ensure that the person to whom

the theatre, auditorium or the place is let for hire and the terms of the hire empower the hirer to charge money for an event in which musical works are communicated to the public, that no provision of Copyright Act is violated by the hirer.

8. With reference to the provisions of Section 55 of the Copyright Act 1957, learned counsel for respondents No. 2 and No. 3 concedes that the defence available is only when the person against whom violation is alleged carries out a due diligence and establishes the same, 10. Section 52A of the Act guides the manner in which due diligence can be established. As per said Section, no person shall publish a sound recording in respect of any work unless on the sound recording or the container thereof the name and address of the person who has made the sound recording and the name and address of the owner of the copyright in such work is printed. Thus, the owner of a place can discharge the onus of due diligence by calling upon the person who takes the place on hire to:-

(i) provide the list of sound recordings which are intended to be communicated to the public, and if it is printed thereon that copyright in the underlying works is vested in somebody.

(ii) require the person concerned to furnish a written request to the appellant for grant of the necessary permission, and

(iii) in case of live performance, the due diligence onus can be discharged by the owner of a place by requiring the hirer to furnish to it a written request to IPRS with respect to the named compositions (i.e. the ones intended to be communicated to the public) being or not being in the repertory of IPRS along with the response of IPRS, and if the response is that the named compositions are in the repertory of IPRS, to insist upon a written permission from IPRS to do the needful.

10. Learned counsel for respondents No. 2 and No. 3 states that in view of the aforesaid legal principle which clearly emerge from Section 52A, a duty must be cast upon IPRS to respond to the requests made by the querists with respect to the query whether the named compositions are in the repertory of IPRS, to which Mr. Parveen Anand, learned counsel for the appellant concedes and says that it may be recorded that within three days of the written request to IPRS, it would be obliged to respond thereto and in the absence of the response may be treated that the same are not in repertory of IPRS.

11. Thus, vis-a-vis the appellant and respondent No. 2 and No. 3, noting that territorial jurisdiction is not fatal to the jurisdiction of a Court, as distinct from a subject matter jurisdiction, with consent of learned counsel for the appellant and respondents No. 2 and 3 we dispose of the appeal, passing consent directions as under:-

(i) Respondents No. 2 and No. 3, with respect to the halls, auditoriums and theatres owned by them shall require any person who takes the same on hire for

a musical evening or a function where music will be played by means of sound recording, to provide the list of sound recordings and the sound recording which are intended to be communicated to the public and if it is printed on the sound recording that copyright in the underlying works is vested in the appellant, require the person concerned to furnish a written request to the appellant for grant of a necessary permission.

(ii) If the hirer intends to have a live performance, by requiring the hirer to furnish a written request made by the hirer to the appellant with respect to the intended compositions to be performed live, requesting to be informed whether the same are in the repertory of IPRS, along with the response of IPRS and if the response is IPRS is that the compositions in question are in the repertory of IPRS, to furnish proof of written permission obtained from IPRS.

(iii) Written requests aforesaid received by IPRS shall be responded to within three days.

A State, as conceded to by learned counsel has to assist everybody in the enforcement of law and particularly when the same affects the right of a person. We would thus commend to respondents No. 2 and No. 3 to frame guidelines for privately owned theatres, auditoriums and halls on the subject of they being hired for events where for a consideration, the Event Managers communicate musical works to the public either by playing sound recording or by way of live performances, so that the mandate of Section 51(a)(ii) of the Copyright Act 1957 is not breached and the duty of due diligence u/s 55 of the said Act is discharged, for which, Mr. Parveen Anand, learned counsel for the appellant states that his client i.e. the appellant would be more than willing to render assistance in drafting the necessary bye-laws, which could then be notified for being enforced in the State of West Bengal. No costs.