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**(1994) 03 MAD CK 0117**

**In the Madras High Court**

**Case No :** Application No. 763 of 1993 in C.S. No. 1254 of 1993

M/s. Echo Recording Co. (P) Ltd., Madras-600086 APPELLANT

Vs

Super Cassette India Ltd., New Delhi 110048 and another RESPONDENT

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**Date of Decision :** 04-03-1994

**Acts Referred:**

Copyright Act, 1957 — Section 52, 52(1), 52(1)(j)

**Citation :** (1994) 03 MAD CK 0117

**Hon'ble Judges :** Govardhan, J

**Bench :** Single Bench

**Advocate :** P.S. Raman, for the Appellant; K.S. Raman, for the Respondent

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## Judgement

Govardhan, J.—The applicant in his affidavit contends as follows: The plaintiff has filed the suit for permanent injunction restraining the respondents from infringing the plaintiffs copyright in respect of the Telugu Feature film Sri Shirdi Sai Baba Mahatmiyam. The respondents have written to the plaintiff threatening to make 5000 cassettes of the musical works in the said picture by invoking the provisions of Section 52(1)(j) of the Copyright Act. Through the Second defendant, most of the illegal cassettes have been marketed in South India since the registered office of the First respondent is at New Delhi. If the respondents are permitted to proceed with the manufacture and distribution of the cassettes, irreparable loss and hardship would be caused to the applicant-plaintiff. The provisions of Section 52(1)(j) of the Copyright Act cannot be attracted in this case, because the plaintiff himself is the first owner since the musical works were produced. Even if he is not the first owner, the plaintiff has not permitted any one else to produce copies of the musical work and therefore, the provisions of Section 52(1)(j) of the Copyright Act cannot be applied. No party will purchase the copyright or enter into an agreement with film producers if the interpretation sought to be given by the defendants is invoked. Hence the application. The second respondent in his counter contends as follows. The deponent is the Branch Manager of if second respondent. The respondents intend to make the

musical works in accordance with Section 52(1)(j) of the Copyright Act of 1957 read with Rule 21 of the Copyright Rules, 1958. The respondents deny the allegation that the second respondent will be marketing the illegal cassettes in Southern India. The cassettes made under the provisions of Section 52(1)(j) of the Copyright Act are illegal. The respondents deny that the defendants admit the ownership of the plaintiff only to seek invoke the provisions of Section 52(1)(j) of the Copyright Act. The allegation that the provisions of Section 52(1)(j) of the Act cannot be applied is denied. The defendants do not interpret to reproduce the musical works of the plaintiff. The defendants will make fresh recording of the entire musical works and the voice also will be different. By hiring studios, musical players, singers etc., the respondent will create a fresh musical work in a different voice and as such this recording done after sending the notice of intention and the amount of royalty as prescribed by the Registrar, Copyright Board is neither a reproduction nor an infringement of the Copyright of the plaintiff. The applicant has not made out a case and hence, the application is liable to be dismissed.

2. The point for consideration is whether the applicant is entitled to the interim injunction as prayed for?

3. The point: The applicant has filed the application for an interim injunction to restrain the respondents from manufacturing, recording, marketing or in any other manner dealing with the pre-recorded audio cassettes, in respect of the musical works of the Telugu feature film "Sri Shirdi Sai Baba Mahatmiyam" contending that the respondents had sent a letter to the applicant stating that they are going to make 5000 cassettes of musical work in the said picture invoking the provisions of Section 52(1) of the Copyright Act read with Rule 21 of the Copyright Rules and he has enclosed a cheque towards the alleged royalty and the respondent has no right whatsoever to produce the copies of the musical work for which he is the owner. The respondents do not dispute that they had sent a letter informing the applicant that he is about to make 5000 cassettes of the musical works of the said picture and sent a draft for the same, but would contend that u/s 52(1)(j) of the Copyright Act it would not amount to an infringement of the copyright owned by the applicant.

4. Section 52(1)(j) of the Copyright Act is as follows:

(j) the making of records in respect of any literary dramatic or musical work, if-

(i) records recording that work have previously been made by, or with the licence or consent of. The owner of the copyright in the work; and

(ii) the person making the records has given, the prescribed notice of his intention to make the records and has paid in the prescribed manner to the owner of the copyright in the work royalties in respect of all such records to be made by him, at the rate fixed by the Copyright Board in this behalf;

Provided that in making the records such person shall not make any alterations

in, or omissions from, the work, unless records recording the work subject to similar alterations and omissions have been previously made by. or with the licence or consent of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the records in question;

According to the Learned Counsel appearing for the respondents, musical work is a combination of melody and harmony or either of them united, reduced to writing or otherwise radically produced or reproduced and it is only the drawings which was prepared by the composer, which can be termed as musical work, and if making records in respect of any musical work, that have been previously made by, with the consent, after issuing a notice of his intention to make the records and has paid the prescribed amount to the owner of the copyright at the rate fixed by the Copyright Board, it would not amount to an infringement of the Copyright provided in making the records, such person shall not make any alterations or omissions from the work done originally. The Learned Counsel appearing for the respondents would argue that what they proposed to do, is only the reproduction of musical work for which, the respondents have got a copyright song by famous Cine playback singers by some other person in the same manner as it was originally recorded and without making any alterations or omissions and that they have sent intimation of their intention to make the records in advance enclosing the royalty fixed by the Copyright Board and therefore, the applicant has no cause of action against the respondents forgetting an order of injunction on the ground that there is no infringement of Copyright as per Section 52 of the Copyright Act. The Learned Counsel appearing for the applicant would, on the other hand, argue that the interpretation given by the respondent to Section 52(1)(j) is not correct and such an interpretation has been given on a prior occasion, and this Court has held that the interpretation given by the respondent is not correct and Section 52(1)(j) is not attracted and the said decision of this Court has been upheld by a Division Bench of this Court. The Learned Counsel appearing for the applicant has filed the copy of the judgment in Writ Appeal No. 59/1990 against the order passed by this Court in Application No. 4088 of 1989 in C.S. No. 695/1989 and in the above judgment, the learned judges in the Bench have made it very clear that after a careful consideration of the terms of the agreement between the producer and the plaintiff, they are unable to find anything therein to support the case of the appellant-defendant that could be construed as a licence or consent of the owner of the copyright viz., the respondent in the appeal, that in the counter filed by the respondent, he has not pleaded that the applicant is the owner of the copyright in the musical work, had either granted licence or consent in his favour and therefore, issuing a notice as contemplated u/s 52(1)(j) enclosing the royalty amount by itself cannot enable the respondents to manufacture, record and market audio cassettes which he proposed to do and therefore, the applicant is entitled to the injunction prayed for. The contention of the respondent's Counsel that the musical work is what is the printed work and notification of the copyright

has prescribed a fee of 5% towards royalty and therefore, they have complied with the provisions of Section 52(l)(j) of the Copyright Act and therefore, there is no infringement of copyright as alleged by the applicant is not tenable in view of the decision referred above. In that view, I hold that the applicant is entitled to the injunction as prayed for.

In the result, the application is allowed.