

(2009) 09 MAD CK 0269

In the Madras High Court

Case No : OSA No. 64 of 2009 and MP No. 1 of 2009

Muthooth Finance Ltd.

APPELLANT

Vs

The Indian Performing Rights Society Limited and Others

RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Copyright Act, 1957 — Section 13, 2, 33(2), 33(3), 51

Citation : (2009) 09 MAD CK 0269

Hon'ble Judges : R. Subbiah, J;M. Chockalingam, J

Bench : Division Bench

Advocate : P.S. Raman for Manoj Sreevalsan, for the Appellant; Sriram Panchu for Meghana Nair, for R1 and Yashod Varadan for R.S. Raveendran, for R5, for the Respondent

Judgement

M. Chockalingam, J.—This appeal challenges an order of the learned Single Judge of this Court allowing an application in O.A. No. 1318/2008 for interim injunction filed by the first respondent/plaintiff.

2. The first respondent/plaintiff while filing the suit has sought for interim injunction alleging that the plaintiff is a cooperative society; that it was permitted to carry on business in musical and literary works; that the defendants are engaged in the business of broadcasting private FM (Frequency Modulation) Radio Station in the city of Chennai in the name of Chennai Live 104.8 FM; that the members of the plaintiff comprised of authors and composers and publishers of Indian Musical and Literary works, have executed deeds of assignment assigning their public performing rights in respect of their musical work; that the owners of copyright in musical and literary work as regards recorded song are entitled to receive loyalty as and when the sound recording is communicated to the members of the public; that the plaintiff has been authorised to grant licence and collect royalties and licence fee on behalf of its members for use and exploitation of the copyrights by means of broadcast, telecast or public performance to the public at large; that while the matter stood thus, the

respondents have started broadcasting the recorded songs in respect of which the members of the plaintiff have owned copyright in relation to musical and literary work; that the defendants cannot use or exploit so and under the circumstances, the respondents should be restrained from doing so.

3. The third defendant contested the application by filing a counter with the following averments:

The third defendant has already entered into an agreement dated 4.6.2008 with Phonographic Performance Limited (PPL), the fifth respondent herein. PPL has been duly assigned the rights by the first owners of the copyright of music being played by Chennai Live. The third respondent also entered into private agreements with other owners of copyrights. The plaintiff has been granted licence to issue licence for performing rights only. The third respondent is not in the business of performing music. It is not required to enter into any agreement with the plaintiff. If interim injunction is granted, it would cause grave prejudice to the third defendant, and hence the application was to be dismissed.

4. The learned Single Judge on enquiry allowed the application granting interim injunction as prayed for. Hence this appeal at the instance of the appellant/third defendant.

5. The only question that would arise for consideration is whether the plaintiff has made out a prima facie case entitling him to get an interim injunction pending the suit.

6. As could be seen above, the first respondent/plaintiff is a cooperative society registered under the Copyright Act, and a certificate of registration has been issued in its favour. The members of the plaintiff comprised of authors and composers and publishers of Indian Musical Literary works have also executed deeds of assignment assigning their public performing rights including the musical and literary work in favour of the plaintiff. Under the agreements, the plaintiffs were authorised to grant licence and collect royalties and licence fee on behalf of the members for use and exploitation of the copyrights by means of broadcast, telecast or public performance to the public at large.

7. It is also the case of the plaintiff that the plaintiff has also fixed a tariff for payment of royalties; that the revenue collected by way of tariff for payment of royalties and licence fee is distributed among the members; that the plaintiff at the time of the filing of the suit, has also filed certain agreements; that the plaintiff has to protect, administer and manage the rights of its members since they are the copyright owners of the musical and literary works; that on inspection, the plaintiff came to know that the defendants have started FM Radio Station in respect of which the members of the plaintiff owned copyright in relation to the musical and literary works; that the defendants have not obtained any licence; that the said works are being done without the knowledge or permission or payment of the required fee, and thus it would amount to infringement within the meaning of Section 51 of the Copyright Act and hence

the plaintiff sent a letter on 3.10.2008 which was not replied; that under the circumstances, a criminal complaint was also lodged before the Court of criminal jurisdiction, and hence pending the suit, it becomes necessary to restrain the defendants from broadcasting; otherwise it would cause harm and injury.

8. On the contrary, it is contended by the appellant/third defendant that the suit is not maintainable; that the application itself is misconceived; that the Court has no jurisdiction to try the suit; that the suit is also bad for misjoinder of parties; that the registration granted to the plaintiff u/s 33(2) of the Copyright Act 1957 is limited to those musical works and any words or actions which are intended to be sung, spoken or performed and in other words, the plaintiff is only to conduct business and issue licence as regards any performance as defined u/s 2(q) of the Copyright Act; but, the third respondent was engaged in the business of broadcasting FM programs through its FM Channel.

9. Pointing to Section 2(dd) of the Act wherein broadcasting is defined, the learned Counsel for the appellant/third defendant would submit that broadcasting is different from performance; that the appellant did not indulge in performance including singing or speaking for which the plaintiff might be entitled to issue licence; that under the circumstances, it cannot be stated that there was any infringement; that the plaintiff has relied on certain agreements; that the executants did not have the right or authority to execute the same since they were not the first owners of copyright as defined under the Act.

10. Relying on the decision reported in AIR 1977 SC 1443, the learned appellant's Counsel would submit that the law in this regard is settled, and hence the parties must be allowed to adduce evidence in order to appreciate the respective contentions; that it is not a stage where interim injunction could be granted; that it is not so that the members of the plaintiff were owners of the copyright as urged by the first respondent's side; that they have no right to assign the right; that they could not have any right to assign the same also; that the claim itself is void; that there are different societies like Phonographic Performances Ltd., which are duly constituted licensing authority for broadcasting music under the Act; that the said society is owning or it is otherwise legally seized of the ownership of the copyright of the members of the plaintiff; that the third respondent has duly permitted the appellant to play music by the other societies including the said PPL registered under the Act; that while the appellant is duly authorised to broadcast of music, the plaintiff cannot claim that they are the exclusive licensing authority to issue licenses for musical works for the purpose of broadcasting, and hence the order of the learned Single Judge has got to be set aside.

11. It is not in controversy that the plaintiff is a registered society. It has also filed agreements in order to indicate that they are the first owners of the copyright in question, and the plaintiff society was also authorized to collect the tariff for the purpose of distribution to its members. It is also not in controversy that the appellant is also registered u/s 33(3) of the Act. Copyright shall subsist

in the three classes of work namely (a) original literary, dramatic, musical and artistic work; (b) cinematographic films; and (c) sound recording as contemplated u/s 13 of the Act. According to the plaintiff, the broadcasting of songs by the appellant through its FM Station would amount to performance of the work in public. It is contended by the appellant's side that what is given to the plaintiff was only to issue licence in respect of the rights to perform only; that the appellant is not carrying on the business of performing music, but it is only broadcasting, and hence there was no infringement at all. Section 2(ff) of the Copyright Act defines what is "communication to public" which means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display. A reading of the same would clearly indicate that performing literary or musical work in public does not only mean a musical performance in a public place as contended by the appellant, but also the broadcasting of the songs would involve communication of the music to the public who have enjoyed by hearing.

12. It was contended before the learned Single Judge that there was an agreement between PPL and the third defendant/appellant in respect of those works, which is in force, and it has got full authority. The said PPL was also added as fifth defendant. The agreement dated 4.6.2008 entered into between the appellant/third defendant and the fifth defendant PPL was placed in the hands of the Court. Clause 11.3 of the agreement would clearly stipulate the scope of the licence granted by the fifth defendant PPL to the third defendant/appellant which reads as follows:

Licensee acknowledges and agrees that this license does not grant any license for the use of literary dramatic or musical works embodied in sound recordings.

13. The very reading of the said clause would indicate that the appellant has been granted licence only for broadcasting the sound recording works of the members of the fifth defendant only. It is also mentioned in the agreement "Broadcast of PPL Controlled Sound Recordings by Pvt. F.M. Radio Stations". Insofar as the recorded music, the communication to the public would involve two separate copyrights (1) rights in recording songs and (2) rights in literary and musical work embodied in sound recording. In such circumstances, the appellant cannot be allowed to take shelter under the agreement entered into between the appellant/third defendant and PPL.

14. The decision relied on by the learned Counsel for the appellant cannot be applied to the present facts of the case since the subject matter which was placed before Their Lordships of the Supreme Court in *Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association and Others*, , was different from one what is now in hand.

15. Now at this juncture, the Court has to look into whether a prima facie case is made out and can also look into the balance of convenience. This Court is able to notice prima facie case which would entitle the plaintiff to have interim injunction

pending the suit. Apart from that, balance of convenience is also in favour of the plaintiff. Hence the learned Single Judge was perfectly correct in granting injunction as asked for. It is left open for the parties to raise their respective contentions and put forth their evidence for appreciation before the trial Court.

16. At the time of the pronouncement of the order, it was brought to the notice of the Court that pending the appeal, there was an interim arrangement suggested according to which the appellant was to furnish bank guarantee to the extent of Rs. 3 lakhs per month before this Court, which has also been done, and it is also being continued. The learned Counsel for the first respondent would submit that if the above arrangement is to be continued, the first respondent should be permitted to receive that amount. In such circumstances, while dismissing the appeal, the interim arrangement originally made by the Court should be continued till the disposal of the suit, and the bank guarantee already furnished in the appeal should be transferred to the original side, and the appellant should continue to furnish the same before the trial Court.

17. As per the said interim arrangement made by this Court, the appellant should place before the Court once in a fortnight a log of the songs broadcasted through their FM Radio at 104.8 Mhz. This Court is of the view that the appellant should continue the same process before the trial Court till the disposal of the suit.

18. For any reason, if there is any default on the part of the appellant, the first respondent is at liberty to move the trial Court, and necessary orders could be made thereon. The trial Court's order of injunction will come to force from the time of default.

19. Any observation made herein will not in any way influence the trial Court at the time of final disposal of the case.

20. It is also brought to the notice of the Court that the matter is of short compass, and hence the suit could be disposed of early. Under the circumstances, after filing of the written statement and framing of issues, the learned Single Judge is required to dispose of the suit within a period of six months therefrom.

21. Accordingly, this original side appeal is disposed of. The parties will bear their own costs. Consequently, connected MP is closed.