

(2010) 05 CAL CK 0051

In the Calcutta High Court

Case No : APOT No's. 269, 275 to 279 and 281 of 2010 TA No's. 29, 31 to 36 of 2010 and CS No. 101, 109 and 112 of 2010 GA No. 1423 of 2010

Saregama India Ltd.

APPELLANT

Vs

Puneet Prakash Mehra and Others

RESPONDENT

Date of Decision : 13-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
Copyright Act, 1957 — Section 18(2), 2(20), 57

Citation : (2011) 45 PTC 120

Hon'ble Judges : Mohit S. Shah, C.J.;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Gautam Chakrabarty and S.N. Mukherjee, Ratnanka Banerjee, S. Roychowdhury, Ajoy Chowdhury and D. Nandi, for the Appellant;S.K. Kapoor, for Defendant in Media Pvt. Ltd., Dhruva Ghosh and Md. Farhauddin for Defendant in Eros International, P.C. Sen, for Defendant in Nadiadwala Grandson, R.R. Sen and Awani Roy for the Defendant in Entertainment Ltd., Anindya Kumar Mitra, for Respondent No. 1-3, Tilak Bose. Sr. Advocate, Abhrajit Mitra, Jishnu Chowdhury, Vicky Singh, Sanjib Kumar Trivedi and Sarbapriya Mukherjee for Defendant in Puneet Prakash Mehra and Ranjan Bachawat, Debnath Ghosh, Arijit Chatterjee, Avinash Kankani and Shourya Mandal for Defendant in Anand Virji Shah, for the Respondent

Judgement

Mohit S. Shah, C.J.

APOT 275 of 2010 has been filed by SAREGAMA India Ltd. against the order dated 30th April, 2010.

APOT 269 of 2010 has been filed by SAREGAMA India Ltd. against the order dated 29th April, 2010 in connection with C.S. No. 101 of 2010.

APOT 278 and 279 of 2010 are filed by Nadiadwala Grandsons Entertainment Ltd. against the orders dated 30th April 2010 and dated 29th April 2010.

APOT 276 and 277 of 2010 are filed by Eros International Media Pvt. Ltd. against

the same order dated 30th April 2010 in connection with suit being No. 112 of 2010.

APOT 281 of 2010 has been filed by Anand Virji Shah and Ors. against the order dated 29th April, 2010 refusing to grant interim relief in favour of the said parties.

1. The controversy which is the subject matter of these seven appeals centre around the alleged copyrights claimed by the three heirs of late Mr. Prakash Mehra on the one hand, Anandji Virji Shah and heirs of Kalyanji Shah of the second part and the heirs of the Prakash Mehra who was the producer of the film called LAWAARIS, Anandji and heirs of Kalyanji who are the composers of songs of the second part and the SAREGAMA India Ltd. (formerly Gramophone Company India Ltd.) also is the third party claiming copyright of the same song and claiming through them Nadiadwala Grandsons Entertainment Ltd., producer of the film called HOUSEFULL. Eros International Media Pvt. Ltd., distributor of the said film and Super Cassettes Industries Ltd. which has made cassettes of the songs in the said film HOUSEFULL.

2. By the consent of the learned Counsel for the parties, the applications for interim order/stay injunction in all the seven appeals filed by different parties were heard together and are being disposed of by this common judgment. The facts leading to filing of these appeals, are broadly stated as under.

3. M/s. Prakash Mehra Productions (hereinafter referred to as Prakash Mehra) had produced a film called LAWAARIS. There is no dispute about the fact that the film was made in the year 1981-82 by Prakash Mehra. By the agreement dated 18th July, 1981 between the Gramophone Company India Ltd. (now SAREGAMA India Ltd. with effect from 3rd November, 2000) and Prakash Mehra, a proprietary concern of the Prakash Mehra, the rights in the literary, dramatic and musical and artistic work and the soundtrack and recording of the songs of the film LAWAARIS were transferred by Prakash Mehra in favour of the Gramophone Company India Ltd. Since there is serious controversy about the scope and ambit of the rights transferred under the said agreement, reference to a terms of the said agreement will be made hereinafter by agreement dated 11th November, 2010. Gramophone Company India Ltd. (now SAREGAMA India Ltd.) had entered into such an agreement with producers of a number of films at the relevant time. The agreement in question was for the films made by Prakash Mehra during the period of one year commencing from 14th April, 1981. There is no dispute of the fact that LAWAARIS was produced by Prakash Mehra during the said period covered by the agreement. Thereafter, by agreement dated 11th February, 2010, SAREGAMA India Ltd. assigned the rights under the said agreement in respect of the song "Apni Toh Jaise Taise..." from the film LAWAARIS in favour of Nadiadwala Grandsons Entertainment Ltd. (hereinafter referred to as Nadiadwala) who have produced a film called HOUSEFULL. The said film HOUSEFULL has a song called "Aap Ka Kya Hoga - Dhanno). The said song is allegedly based on the song "Apni Toh Jaise Taise..." of the film LAWAARIS. After making the film, Nadiadwala Grandsons Entertainment Ltd. assigned the

distributorship rights under the film to Eros International Media Pvt. Ltd. (hereinafter referred to as Eros) Nadiadwala also transferred the rights of the recording cassettes and mobile recording etc. in favour of the Super Cassettes Industries Ltd (hereinafter referred to as Super Cassettes).

4. Under the said agreement, SAREGAMA India Ltd. granted rights to Nadiadwala and Super Cassettes the licence to record and synchronize the works meaning and including the lyrics and music of the song "Apni Toh Jaise Taise..." from the film LAWAARIS into use/exploit the recreated sound recording and to use the same by physical as well as nonphysical means, modes or including mobile digital platforms and to make any sound recordings embodying the recreated sound recording embodying the said works either alone or together with any other sound recording etc. and also to exploit the new film HOUSEFULL contending the said recreated sound recording or any part thereof by any means into commercially exploited, exhibited the same including VCP, DVD, television, internet etc.

5. By letter dated 4th March, 2010, Prakash Mehra Productions through the heirs of Prakash Mehra alleging that Nadiadwala has purchased an item number for his movie HOUSEFULL of their song "Apni Toh Jaise Taise..." from movie LAWAARIS, but Nadiadwala has not approached Prakash Mehra for any permission regarding this song. It was also stated in the said letter that if Nadiadwala had taken any permission from SAREGAMA India Ltd., Mehra would like to know under which clause the permission was given as indicated in the agreement copy. Mehra also requested for pending royalty statements. SAREGAMA India Ltd. sent the reply dated 16th March, 2010 to the Mehra requesting for copies of four documents such as a succession certificate/Will of Prakash Mehra to enable SAREGAMA India Ltd. to look into the matter. Mehra sent their letter dated 20th March, 2010 informing SAREGAMA India Ltd. that Prakash Mehra expired on 17th May, 2009 and thereafter also Mehra had received cheques in December, 2009 and February, 2010 in the name of M/s. Prakash Mehra Productions. Mehra again invited the attention of the SAREGAMA India Ltd. to the queries of the letter dated 4th March, 2010. SAREGAMA India Ltd. reiterated the reply of the letter dated 20th March, 2010 whereupon Mehra sent their legal notice dated 31st March, 2010 to SAREGAMA India Ltd., Nadiadwala, Eros and Super Cassettes alleging infringement of their copyright in the song "Apni Toh Jaise Taise..." from the film LAWAARIS and in respect of the literary and musical work of the sound recording. The Mehra called upon the above four parties to cease and desist from exploiting the work that is the lyrics of the song "Apni Toh Jaise Taise..." and sound recording in any manner whatsoever including exploiting the same in the meaning of the film HOUSEFULL. The Mehra also called upon the parties to deliver all infringed copies incorporating the literary work and sound recording to the Mehra. On 6th April, 2010, Mehra also called upon the above four parties to offer inspection of the documents of the contract under which the above four parties acquire rights relating to the said song. SAREGAMA India Ltd. gave their reply dated 12th April, 2010 to the above notices contending that they had

acquired the rights by virtue of the valid assignment executed by Prakash Mehra in favour of SAREGAMA India Ltd. and claimed ownership rights of copyright in respect of literary work which was claimed by Mehra.

6. Similarly, Anandji and the heirs of Kalyanji also sent cease and desist notice dated 30th March, 2010 to the above four parties and SAREGAMA India Ltd. sent the reply dated 31st March, 2010 contending that SAREGAMA India Ltd. had received rights for exploiting lyrics and music of the song "Apni Toh Jaise Taise..." from the film LAWAARIS from the producers of the said film Prakash Mehra productions and that SAREGAMA India Ltd. is also the owner of the original plaint and is the first owner of the copyright of the music of the film LAWAARIS is entitled to exploit the same in any manner whatsoever. Similarly, Super Cassettes Industries Ltd. sent their reply contending that they have obtained due permission from SAREGAMA India Ltd. to use the lyric and musical works embodied in the song in question in the film HOUSEFULL.

7. Thereafter, on 16th April, 2010, SAREGAMA India Ltd. filed civil suit No. 101 of 2010 in this Court against the heirs of late Prakash Mehra and against Anandji and the heirs of Kalyanji to restrain them from interfering with the exhibition of the film HOUSEFULL and publication of the song in the said film as part of the cinematography of the film. In the application of the said suit the learned Single Judge of this Court issued notice returnable on 19th April 2010 as per order dated 16th April, 2010. On 19th April, 2010, heirs of Prakash Mehra filed civil suit in the Bombay High Court claiming the following reliefs:

(a) for a declaration that late Shri Prakash Mehra (and now Plaintiff Nos. 1 and 2 and Respondent No. 6 as heirs of late Shri Prakash Mehra) are the owners of all rights including copyright in the lyrics and Sound Recording of the song "Apni To Jaise Taise" used in the film "Laawaris" released in the year 1981 starring Amitabh Bachan, Zeenat Aman and Others;

(b) for a declaration that late Shri Prakash Mehra (and now Plaintiff Nos. 1 and 2 and Respondent No. 6 as heirs of late Shri Prakash Mehra) are entitled to the special rights in respect of the lyrics of the song "Apni To Jaise Taise" used in the film "Laawaris" released in the year 1981 starring Amitabh Bachan, Zeenat Aman and Others;

(c) this Hon'ble Court be pleased to declare that all assignments/ agreements made by the Respondents No. 1 to 5 in respect of the Respondent's Film "Housefull" starring Akshay Kumar, Deepika Padukone, Lara Dutta and Ors. are unauthorized, bad-in-law and illegal;

(d) that Respondent Nos. 1 to 5 by themselves, servants, agents or otherwise howsoever be restrained by permanent order and injunction from in any manner reproducing the Literary Work and/or Sound Recording in any material form or issuing copies of Literary Work and/or Sound Recording to public or performing the Literary Work and/or Sound Recording in or communicating the Literary Work and/or Sound Recording to the public or making or releasing any

cinematographic film or sound recording of or containing the Literary Work and/or Sound Recording or otherwise in any manner infringing the copyright owned by the Petitioners in the Literary Work and/or Sound Recording.

(e) for permanent injunction restraining Respondent Nos. 1 to 5 by themselves, servants, agents or otherwise from in any manner:

(i) violating/infringing the special rights of late Shri Prakash Mehra as author of Literary Work or claiming that Respondent Nos. 1 to 5 or any of them is author of Literary Work.

(ii) Distorting, mutilating or modifying the Literary Work or doing any other act prejudicial to the honour or reputation of late Shri Prakash Mehra and/or from releasing the Respondent's Film "Housefull" comprising the Literary Work as defined in prayer Clause (a) above or communicating the same to the public in any manner whatsoever.

(f) that the Respondent Nos. 1 to 5 be ordered and decreed to pay to the Petitioners a sum of Rs. 50,00,000/- (Rupees Fifty lakhs only) to the Petitioners towards damages on account of the unauthorized and illegal exploitation of the Literary Work in the Respondent's Film;

(g) that the Respondent Nos. 1 to 5 be called upon to produce true and faithful accounts of revenues and profits arisen out of use/exploitation in any manner of the Literary Work and on such accounts being rendered, the amounts payable to the Petitioners be ascertained and Respondent Nos. 1 to 5 be ordered and decreed to pay such amounts to the Petitioners.

(h) that the Respondent Nos. 1 to 5 be ordered and decreed to pay to the Petitioners such damages for the distortion, mutilation and modification done by them in relation to the Literary Work as may be ascertained by this Hon'ble Court upon enquiry for which necessary orders and directions be passed and enquiries made.

(i) for a decree for delivery upto the Petitioners of all infringing copies of the Literary Work or any films, audio, tapes, VC Ds, DV Ds, and all devices containing the Literary Work.

(j) Pending the hearing and final disposal the Respondent Nos. 1 to 5 by themselves, servants, agents or otherwise howsoever be restrained from in any manner reproducing the Literary Work and/or Sound Recording in any material form or issuing copies of Literary Work and/or Sound Recording to public or performing the Literary Work and/or Sound Recording in or communicating the Literary Work and/or Sound Recording to the public or making or releasing any cinematographic film or sound recording of or containing the Literary Work and/or Sound Recording or otherwise in any manner infringing the copyright owned by the Petitioners in the Literary Work and/or Sound Recording;

(k) Pending the hearing and final disposal the Respondent Nos. 1 to 5 by

themselves, servants, agents or otherwise be restrained from in any manner:

(i) violating/infringing the special rights of the Plaintiff No. 1 and late Shri Prakash Mehra as author of Literary Work or claiming that Respondent Nos. 1 to 5 or any of them are authors of Literary Work.

(ii) distorting, mutilating or modifying the Literary Work or doing any other act prejudicial to the honour or reputation of late Shri Prakash Mehra and from releasing the Respondent's Film "Housefull" comprising the Literary Work used in the original film "Laawaris" or communicating the same to the public in any manner whatsoever.

(l) Pending the hearing and final disposal of the suit, the Respondent Nos. 1 to 5 be ordered and directed to deliver upto the Petitioners all infringing copies of the Literary Work or any films, audio, tapes, VC Ds, DV Ds, and all devices containing the Literary Work and/or Sound Recording.

(m) pending the hearing and final disposal of the suit, the Court Receiver, High Court Bombay be appointed as Receiver with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908 including the powers to take possession of the following:

(i) All documents, writings, agreements executed by the Respondent Nos. 1 to 5 in respect of the Respondent's film "Housefull";

(ii) All books of account in respect of the Respondent's film "Housefull" and in respect of the exploitation proceeds arising out of the commercial exploitation of the audio rights of the Respondent's Film comprising the Literary Work and/or Sound Recording;

(iii) All negatives/prints etc. of the Respondent's Film "Housefull" lying in the custody and control of Respondent Nos. 1 to 5 and/of any other person/s.

(iv) All infringing copies containing the Literary Work and/or Sound Recording;

(v) All sound recordings including all audio, tapes, VC Ds, DV Ds, and all devices containing the Literary Work and/or Sound Recording.

(vi) All amounts receivable in respect of the exploitation of the audio rights in respect of the Respondent's Film comprising the Literary Work and/or Sound Recording in custody of Respondent Nos. 1 to 5 and/or their dealers and distributors.

8. On 19th April, 2010, the learned Single Judge of this Court granted ex parte ad interim injunction against Mehras and Anandji and the heirs of Kalyanji restraining them from interfering with the exhibition of the film and publication of the song in the said film as a part of the cinematographic film called HOUSEFULL.

9. On 23rd April, 2010, Mehras requested for vacating the ad interim order dated 19th April, 2010. Kalyanji Anandji also moved an application for injunction against SAREGAMA India Ltd. and Ors. The matters were partly heard on 23rd

April, 2010 which was a Friday and the arguments continued on 26th April, 2010 and 28th April, 2010. On 29th April, 2010, the learned Single Judge passed two orders viz. -i) the ex parte ad interim order dated 16th April, 2010 in the suit of SAREGAMA India Ltd. restraining the Mehras and Kalyanji Anandji from interfering with exhibition of the film was vacated and ii) a prayer of Kalyanji Anandji against the ad interim order sought by Kalyanji Anandji to restrain exhibition of the film HOUSEFULL with the song in question was refused. The application moved by Mehras for injunction in their fresh suit being civil suit No. 112 of 2010. On 29th April, 2010 itself the Mehras withdrew their Bombay High Court suit after informing the Bombay High Court that the suit has been filed in the Calcutta High Court. On 30th April, 2010, the learned Single Judge dictated the order granting interim injunction in the suit of the Mehras restraining exhibition of the film HOUSEFULL without deleting song in question that is exhibition of the film HOUSEFULL with the song in question was restrained.

10. SAREGAMA India Ltd. as well as the producer, exhibitor and musical recording company of the film HOUSEFULL have challenged both the orders that is the order dated 29th April, 2010 vacating the ad interim injunction order and also the order dated 30th April, 2010 passed by the learned Single Judge restraining exhibition of the film HOUSEFULL with the song in question. Kalyanji Anandji have filed appeal Challenging the order dated 29th April, 2010 refusing to grant of ad interim injunction in their favour in their suit. At the hearing of the said applications, the learned Counsel for the Eros International Media Pvt. Ltd. submitted that the film HOUSEFULL was slated for release on 30th April, 2010 all over India and abroad and, therefore, 1400 prints were distributed in India and 75 prints were distributed abroad. The film HOUSEFULL was also released in U.P. on 29th April, 2010 and the learned Single Judge erred in not at all considering the question of balance of convenience, Mehras in their suit filed in the Bombay High Court had claimed damages of Rs. 50 lacs and after filing the suit in this Court, they have withdrawn the suit from the Bombay High Court. In view of this claim without prejudice to their rights and contentions, Eros International Media Pvt. Ltd. is ready to execute a bank guarantee for a sum of Rs. 50 lacs. It is submitted that Eros International Media Pvt. Ltd. purchased the right to distribute for exhibiting the film from Nadiadwala after paying substantial amount running into crores of Rupees and by an order passed on 30th April, 2010 itself, the learned Single Judge could not have restrained exhibition of the film.

The learned Counsel for all the three parties, i.e., SAREGAMA India Ltd., Nadiadwala (producer of HOUSEFULL) and Eros (distributor of HOUSEFULL) have submitted that the newspaper reports about the song in question in the film HOUSEFULL being based on the particular song in the film LAWAARIS was made known to the world at large for the last more than three months. Reference was also made to the newspaper reports in "The Times of India" dated 12th February, 2010 to the above effect. It is also submitted that on the ground of delay that the learned Single Judge ought to have refused to grant any ad interim relief in the suit of Mehras who had moved the Court with a false statement in their plaint

in paragraph 5 (d) of their plaint in civil suit No. 1338 of 2010. During his lifetime, Prakash Mehra had not assigned/executed/transferred/ licenced any right including copyright in the literary work and/or the sound recording in favour of any third person. It is submitted that in their letter dated 4th March, 2010, Mehra had specifically mentioned in their letter dated 4th March, 2010 to SAREGAMA India Ltd. that Nadiadwala who had purchased an item number for his movie HOUSEFULL of the song "Apni Toh Jaise Taise..." from the film LAWAARIS had not approached Mehra and if he had taken any permission from SAREGAMA India Ltd., Mehra would like to know under which clause it has been given and that Mehra may be given the copyright to mark the same.

11. It is, therefore, submitted that the said letter clearly indicates that Mehra were aware about the agreement between Prakash Mehra Productions and SAREGAMA India Ltd. and still they have made a false statement in paragraph 5(d) of their plaint to the fact that during his lifetime, Prakash Mehra had not transferred/licenced the copyright in the literary work and sound recording in their favour in respect of the song in question from LAWAARIS in favour of any third person. It is submitted that in view of such conduct on the part of the Mehra, they are disentitled from getting any interim injunction which is equitable relief. On the question of Balance of Convenience they have referred to with regard to grant or refusal of injunction, following decisions *Sitaram Jaipuria and Others Vs. Banwarilal Jaipuria*, unreported decision in the Suit No. 290 of 1994 (*The Industrial Gases Ltd. and Anr. v. The Kamrup Industrial Gases Ltd and Anr.*); *R.M. Subbiah and Another Vs. N. Sankaran Nair and Another*,

12. On the other hand, the learned Counsel for the Mehra has vehemently submitted that the agreement dated 18th July, 1981 between SAREGAMA India Ltd. and Prakash Mehra was only for sound recording and not for embodying any song of LAWAARIS in any cinematographic effect. It is submitted that the said agreement only conferred rights for recording songs of the film on cassettes and no permission was granted for exploiting the songs in the film LAWAARIS into any cinematographic film as there is clear breach of the copyright of Mehra. The reference is sought to be made to the provisions of the Copyright Act in support of the contention that the copyright in sound recording would not include the right to exploit the literary work and music of the song in question into a cinematographic film, otherwise, what is known to the people at large is the song of LAWAARIS will now be known as the song of HOUSEFULL. It is, therefore, submitted that deleting the infringing part of the song in question in HOUSEFULL can be done very easily and, therefore, balance of convenience is in the favour of Mehra. The learned Counsel also questions maintainability of the appeal in the context of the order passed by the learned Trial Judge on 30th April 2010 at 2.22 P.M. referring to the decisions of the Supreme Court reported in *Rama Narang Vs. Ramesh Narang and Another*, .

13. The learned Counsel on behalf of Kalyanji Anandji submitted that Prakash Mehra had copyright only in the literary work in the songs of the film LAWAARIS

and the sound recording of the songs in the said film but Prakash Mehra had no right in the musical work in the said songs of LAWAARIS that it was Kalyanji Anandji who had composed the music of the songs in the film LAWAARIS and that Kalyanji Anandji were not employees of Prakash Mehra. Kalyanji Anandji had the rights in the musical work of the songs in the film LAWAARIS as recognized by Section 57 of the Copyright Act, 1957. It is submitted that Kalyanji Anandji had never assigned their copyright in the musical work in the songs of LAWAARIS and, therefore, whatever may be the controversy about the assignment of Prakash Mehra's rights in the literary work in the songs of LAWAARIS, there has never been any assignment of Kalyanji Anandji's rights in the musical works of the songs in LAWAARIS and, therefore, Kalyanji Anandji are entitled to get an interim injunction against the exhibition of the film HOUSEFULL with the song in question. He has referred in support of his contention to a decision of the learned Single Judge of this Court reported in AIR 2002 Cal 33.

14. The learned Counsel on behalf of Kalyanji Anandji further submitted that the producer of the film HOUSEFULL has distorted, mutilated and modified the song in question of LAWAARIS while embodying a song based on the same in HOUSEFULL and, therefore, also Kalyanji Anandji are entitled to restrain exhibition of the film HOUSEFULL with such distorted/mutilated/modified musical work. It is also submitted that while Super Cassettes have acknowledged the copyright of SAREGAMA India Ltd. as the owner of the original work from film LAWAARIS, they have not acknowledged Kalyanji Anandji as the music composer of the original song of the film LAWAARIS and, therefore, also Kalyanji Anandji is entitled to restrain exhibition of the film HOUSEFULL where music, composition is not acknowledged in respect of the song in question and sale of cassettes and other works were their music composition of the song of LAWAARIS is not acknowledged. The special rights of the authors are recognized u/s 57 of the Copyright Act, 1957 are known as higher moral rights and the right to seek damages which are known as legal rights. According to him this portion of his submission is supported by the judgment of the learned Single Judge of the Bombay High Court reported in Ram Sampath Vs. Rajesh Roshan and Others,

15. Opposing the injunction, it is submitted on behalf of SAREGAMA India Ltd. and the producer, distributor and music recording company of HOUSEFULL that Kalyanji Anandji had composed the music for the songs of LAWAARIS and that for the last almost 30 years Kalyanji Anandji had not claimed any rights of their own and that as producer of the film only Prakash Mehra who had the copy right rights in the literary works and musical works in the songs of LAWAARIS, which rights were assigned in favour of SAREGAMA India Ltd. far back on 18th July, 1981. It is submitted that in view of the above, Kalyanji Anandji are not entitled to get any injunction against exhibition of the film with the song in question.

16. Having heard the learned Counsel for the parties, we are of the view that the rival contentions urged on behalf of several parties need detailed examinations as the appeals raised several questions of law and fact warranting detailed

hearing. All these appeals and the decisions sought to be relied upon by the learned Counsel for the parties will be considered at the time of final hearing of the appeals which shall take place after summer vacation. In the mean time, it is necessary to consider whether there should be interim arrangement during the pendency of appeals. Section 18(2) of the Copyright Act of 1957 reads as under:

Section 18(2) -- Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

17. Section 2(xx) of the Copyright Act, 1957 defines that "sound recording" means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is the method by which the sounds are produced.

18. Sequently question is whether the rights in sound recording transferred by Prakash Mehra on 18th July, 1981 included only the right to reproduce the songs in the form of records etc. as contended by Mehra or whether such rights also included the rights to synchronize the lyrics and music of the songs in the film LAWAAARIS along with the other lyrics and to embody them as a song as a part of the cinematography, these are all debatable questions which need full hearing as pronouncement of any decision on such highly disputed questions of law and fact would have serious ramifications on the copyrights in the entire film industry and, therefore, such adjudication must precede a detailed hearing which may take place after the summer vacation.

19. It appears from impugned judgment and order dated 30th April 2010 while injuncting the Respondents in Mehra's Suit (112 of 2010) from exploiting the song "Apni To Jaise Taise....." in the film Houseful the learned trial Judge held prima facie Mehra's have been able to establish their case, solely relying on the findings and reasoning recorded in the order of Her Ladyship dated 29th April 2010 passed in the application being G.A. No. 1251 of 2010 filed by Saregama in its suit. In this order dated 29th April 2010 which is also appealed against, the learned Judge reached conclusion prima facie that the exploitation of the subject song in the film "Housefull" is de hors the agreement between Saregama and Prakash Mehra production.

20. While holding as above the learned trial Judge construed the Clauses 3A and 5 of the agreement of 1981 in the light of various provisions of Copy Right Act 1957. It appears that the learned trial Judge did not consider Clause 4 of the agreement. We are of the view interpretation given by the learned trial Judge needs to be reconsidered in view of argument advanced by the learned Counsel for the parties, as referring to the decision of learned Single Judge reported in Gramophone Company of India Limited Vs. Shanti Films Corporation and others, such interpretation cannot be accepted to be final even at the interlocutory stage

on apparent reading.

21. In the mean time, the question of balance of convenience has to be considered on an urgent basis as the distributor of the film has had already dispatched 1400 prints of HOUSEFULL all over India and 75 prints abroad. During hearing of the stay application, it was clearly understood that Mehras would not proceed with the hearing of the contempt applications against SAREGAMA India Ltd., producer, distributor and music recording company of HOUSEFULL. The Plaintiff Mehras are admittedly aware of the fact of use of the said song in Film "Housefull" sometimes prior to 4th March 2010 and it will appear from their letter dated 4th March 2010 of Mehras wherefrom it is also clear that Saregama is presumed to have authority to grant permission to Sajid Nadiawala. Instead of taking action Mehras went on writing letters till 6th April 2010 and thereafter 19th April 2010 they filed suit in the Bombay High Court pleading amongst other there has been no assignment nor any transfer of copy right of the said song in favour of third party totally denying existence of the said agreement. We are of the view this period at least from 4th March 2010 till 18th April 2010 was very vital. They could have approached Court earlier when no specific reply of the letter dated 4th March 2010 was received as regard grant of permission to use the said song by Nadiawala in the new film. It is also noted that to the notice and knowledge of the Mehras on 15th March 2010 the music of the film "Housefull" was released.

The factual aspect in this case in our prima facie view has not been appreciated by the learned trial Judge in right direction. This factor needs to be scrutinized closely later on reading of the several authorities cited above. The film was already slated for release on 30th April, 2010 and the learned Single Judge had for the first time granted interim injunction on 30th April, 2010 when the film was already released or about to be released all over the country and abroad. The question of balance of convenience was required to be considered by the learned Single Judge. Since the Mehras would not proceed with the hearing of the contempt applications, the film is running with 1400 prints in India and 75 prints in abroad and at this stage, therefore, to require the distributor to recall the prints or to delete any portion of a song in question would cause immense hardships to the producer and distributor and music recording company of the film HOUSEFULL and this hardship in our view can neither be estimated nor be compensated monetarily. On the other hand, if the Mehras succeed in their suit considering that they claimed damages of Rs. 50 lacs as damages in the suit filed in the Bombay High Court on 19th April, 2010, (it has subsequently been withdrawn on 29th April, 2010), they can be fully compensated in terms even going by the case made out in their suit in Calcutta.

22. We are of the view considering serious disputes including maintainability of the appeal, raised by the parties, that interests of justice would be served if we grant interim stay of the injunction granted by the learned Single Judge by the order dated 30th April, 2010 to the extent as stated hereinafter on condition that

SAREGAMA India Ltd., Nadiadwala (producer of HOUSEFULL) and Eros (distributor of HOUSEFULL) to furnish Bank guarantee in the sum of Rs. 50 lacs with the Registrar, Original Side, High Court, Calcutta within a period of one week from today. In case of default, the interim injunction granted by the learned Single Judge shall operate and the film HOUSEFULL shall not be exhibited without deleting the song in question as directed by the learned Single Judge.

23. Coming to the application for interim injunction in the suit filed by Kalyanji Anandji, it appears that the case of the said Plaintiffs is that Kalyanji Anandji were music composers for the songs in film LAWAARIS and they had authors' special rights in the musical work in the song of the film LAWAARIS and the learned Single Judge having found that the song in question in HOUSEFULL is infringement of the copyright in the song of LAWAARIS, the injunction as prayed for against exhibition of the film with the song in question should be granted. However, the learned Single Judge has not granted any injunction in the suit filed by Kalyanji Anandji (Anandji and the heirs of Kalyanji), hence, the question is whether any interim injunction should be granted during pendency of the appeal of Kalyanji Anandji. It is true that it is not the case of any party that Kalyanji Anandji had assigned their rights in the musical work in the songs of LAWAARIS. It is the case of SAREGAMA India Ltd. and producer and distributor of HOUSEFULL that Kalyanji Anandji were music directors of the film LAWAARIS and, therefore, as per the judgment of the Bombay High Court in Suit (L) No. 2993 of 2006 (Anandji Virji Shah and Ors. v. Ritesh Sidhwani and Ors.) decided in 2006 they should be treated as having entered into a contract of service with Prakash Mehra Productions, producer of LAWAARIS and, therefore, Kalyanji Anandji had no copyright in the musical works in the songs of LAWAARIS and in the literary as well as musical works in the songs of LAWAARIS were with Prakash Mehra Productions who had assigned their rights in favour of SAREGAMA India Ltd. on 18th July, 1981. This question also is not free from doubt and in their appeal, Kalyanji Anandji have made out a prima facie case for consideration of their case at the final hearing of their appeal. This Court does not express any opinion on the merits of the controversy between the parties, but on the question of balance of convenience, we find that since the film has already been exhibited on 30th April, 2010 and 1400 prints are being exhibited all over the country and 75 prints abroad, SAREGAMA India Ltd., Nadiadwala (producer of HOUSEFULL), Eros (distributor of HOUSEFULL) may jointly or Eros individually may give a bank guarantee of Rs. 25 lacs by any nationalized Bank, in favour of Registrar, Original Side to the Credit of the appeal of Anandji and Ors. within one week from today, failing which there shall be interim injunction against exhibition of the film HOUSEFULL with the song in question.

24. We further direct that, in any case, the producer of HOUSEFULL shall not release any further print of the film with the song in question over and above 1400 prints already released in India and 75 prints abroad till the final disposal of these appeals.

All the appeals shall be listed for final hearing on 21st June, 2010.I agree.