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(2013) 03 CAL CK 0062

In the Calcutta High Court

Case No : TA No. 29 of 2013 with T. No. 62 of 2013

Saregama India Ltd. — APPELLANT

Vs

Viacom 18 Motion Pictures and Others — RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:
Copyright Act, 1957 — Section 14(a), 51

Citation : (2013) 3 WBLR 154

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Pratap Chatterjee, Mr. S.N. Mookerjee, Mr. Ranjan Bachawat, Mr. Debnath Ghosh, Mr. Gautam Banerjee, Mr. Sayan Roychoudhury and Mr. Shounak Mitra, for the Appellant; J.K. Mitra, Mr. Abhrajit Mitra and Mr. Jishnu Choudhury, Advocates for Respondent no. 1, Mr. T.K. Bose and Mr. Suvasish Sengupta, Advocate, for the Respondent

Judgement

I.P. Mukerji, J.—This application at the "New Motion" stage was heard by me for a considerable length of time. In my opinion, all the relevant papers are before the Court. Hence, there is no point in keeping this application pending, after passing or refusing an interim order and inviting affidavits to be filed. In the facts and circumstances of the present case, the prayer for an order of injunction has to be refused. My reasons are as follows:

2. I agree with most of the legal arguments of Mr. Pratap Chatterjee, Senior Advocate and Mr. S.N. Mookerjee, Senior Advocate for the plaintiff.

3. The agreements of 24th April 1967 and 3rd August 2009 for assignment of copyright clearly show that amongst other things the sound recorded in the soundtrack and in the magnetic tapes, of the film "Aradhana" were assigned to the plaintiff. Thus the lyrics of the song in the film "Mere Sapno Ki Rani" were also part of the assignment.

4. Considering the decisions of the Supreme Court in Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association and Others, and a

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Division Bench of the Court in Saregama India Limited v. Puneet Prakash Mehra & Others reported 2011(1) CHN (Cal) 341, it is to be presumed now, in the absence of contrary evidence, that the first owner of the copyright in the lyrics and in the music of the song is the plaintiff.

5. Next, although the film was released on 8th February 2012 and this application was filed on 28th February 2013, this Court is empowered to pass an order of injunction on the dicta laid down by the Supreme Court in Midas Hygiene Industries P. Ltd. and Another Vs. Sudhir Bhatia and Others,

6. The first and second defendants succeed at this stage, on facts.

7. The part of the film "Special 26" where the above copyright of the plaintiff is said to have been infringed was played before me on a laptop. The part spans about seven seconds or even less than that. It shows that Mr. Anupam Kher, the actor in the film, is rendering four or five words, namely, "Mere Sapno Ki Rani...." from the song. I would not say that the actor renders those words in a tune. It is only in a particular tone that those words are said by him while walking along, opening the door and getting into the room. These words could at best very remotely imitate the tune.

8. When one considers Section 14(a) and Section 51 of the Copyright Act, 1957 together with the decision of the Supreme Court in R.G. Anand Vs. Delux Films and Others, one forms the opinion that in order to succeed a plaintiff has to show "copying" or "reproduction" and at the prima facie stage prima facie "copying" or "reproduction". Therefore, the allegedly copied material should have some resemblance with the original work.

9. In my opinion, the copyright in the song in question is composite. It is copyright in the lyrics and in the music, combined. It can also be copyright in the lyrics as a whole or copyright in the music as a whole. After hearing the song no one can say that there has been any infringement of the music because, as I have said, those words are not even set to tune.

10. Next comes the question as to whether there is any infringement of the copyright in the lyrics. If those four or five words are segregated from the entire song, in my opinion, nobody has copyright over those words because those words are used very commonly all over our country.

11. In those circumstances comes the principle of de minimis followed by the Division Bench of the Delhi High Court in the unreported case of India TV Independent News Service Private Limited & Others v. Yashraj Films Private Limited decided on 21st August 2012. Great reliance was placed on this principle by Mr. Jayanta Kumar Mitra, learned Senior Advocate and Mr. Tilak Kumar Bose, leaned Senior Advocate, for the defendant Nos. 1 & 2 respectively. It, inter alia, is that if copyright infringement is trifling or minimal the Court should ignore it.

12. Let us assume that the rendition of those four words was infringement of the plaintiffs copyright in the lyrics. It has no impact, no effect and causes no loss to

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anybody. It is trifling. It is minimal. I would ignore it applying this principle.

13. For these reasons, the order of injunction is refused at this stage.

14. This application is disposed of by the above order. All findings are prima facie.

15. All parties are to act on a signed photocopy of this order on the usual undertakings. Urgent certified photocopy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

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