

(2013) 05 DEL CK 0149
In the Delhi High Court
Case No : CS (OS) No. 805 of 2004

Super Cassettes Industries Ltd.

APPELLANT

Vs

Mr. Onkar Singh and Others

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Copyright Act, 1957 — Section 18

Citation : (2014) 57 PTC 460

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Said Khan and Mr. Achutan Sreekumar, for the Appellant;

Judgement

M.L. Mehta, J.—This is a suit for permanent injunction restraining infringement of copyright, breach of contract, inducement to breach, damages, rendition of accounts of profits and delivery up of all infringing materials with respect to copyright in the album "Sun Nakhre Waliye". It is pertinent to note at the very outset that the issues in the instant suit would be governed by the Copyright Act, 1957 (Act). This is in light of the fact that under the erstwhile Act, the author of a literary or musical work included in a sound recording could sell all copyrights including the right to receive royalties for a one-time or a lump sum consideration. The facts of the case are as follows: The plaintiff submits that it is a Public Limited Company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing, production and marketing of video cassettes (blank and recorded), CDs, televisions, 2-in-1s, tape-recorders etc. including its exclusive propriety, "T-Series" brand of Music Cassettes. And that defendant no. 1, Mr. Onkar Singh, is the Managing Director of the defendant no. 2 company, M/s. Kismet Entertainment Pvt. Ltd. Defendant no. 3 is a singer/artist by the name of Swaran Singh alias Romey Gill. Defendant no. 4, Balbir Singh and defendant no. 5, Amarjot S. Bhasin, are the partners of defendant no. 6, M/s. Ting Ling India.

2. The plaintiff submits that initially the defendants no. 2 and 3 entered into an

Exclusive Recording Agreement (ERA) dated January 5, 2001 by virtue of which it was decided that defendant no. 2 will record the songs of defendant no. 3 and that all the rights to the said songs will vest with defendant no. 2. And additional agreement dated March 28, 2001 was entered into between the parties, in which defendant no. 3 confirmed that the ERA with defendant no. 2 was the only exclusive recording agreement executed by him as a singer.

3. The plaintiff further submits that it entered into an agreement dated December 11, 2001 (First Agreement) with the defendant no. 2 stating that it will record four music albums with defendant no. 3 and that all the rights in the said albums would be assigned to the plaintiff. The First Agreement also provided that in the event of any breach by defendant no. 2, the plaintiff would be entitled to legal remedies such as injunction, damages etc. Further, the plaintiff submits that as per the First Agreement, defendant no. 2 was supposed to complete the delivery of all four music albums within a period of three years from the date of the agreement i.e. December 11, 2004; and in no case later than December 11, 2005.

4. As per the First Agreement, the first album, titled "Nakhre Chadi Jawani Da" was handed over to the plaintiff by defendant no. 2. Thereafter, the defendant no. 2 entered into an Assignment Deed dated December 20, 2001 (First Assignment Deed), wherein the defendant no. 2 assigned all copyrights, including the sound recording and underlying musical and literary works in the first album of defendant no. 3 recorded for the plaintiff. And that a lump sum consideration amount of Rs. 4,00,000/- (Rupees Four Lakhs only) was paid to defendant no. 2 by the plaintiff in two installments and thereafter the first album was released by the plaintiff in the market. Thereafter, the plaintiff submits that defendant no. 2 handed over the second album titled "Rang Badle Talwaran De" vide Assignment Deed dated April 8, 2002 (Second Assignment Deed). And that vide the Second Assignment Deed, defendant no. 2 assigned all copyrights in the second album and its underlying work to the plaintiff, for a total and final lump sum consideration of Rs. 1,00,000/- (Rupees One Lakh only) which was paid to defendant no. 2 on April 8, 2002.

5. It further submits that shortly thereafter, defendant no. 2 delivered a third album of defendant no. 3 titled "Jogan Ho Gaya Ve". Subsequently, the plaintiff submits that on July 20, 2002 it entered into a Memorandum of Understanding (MoU) with defendant no. 2, by virtue of which it was decided that defendant no. 2 would assign world rights for any future music albums produced by it for a consideration amount of Rupees One Lakh each. Pursuant to the said MoU, the defendant no. 2 and the plaintiff entered into a Detailed Agreement dated July 20, 2002 by which the former agreed that:

- a. The Detailed Agreement shall supersede all previous agreements between the parties;
- b. The defendant will deliver six albums to the plaintiff;

- c. The third album i.e. "Jogan Ho Gaya Ve" which was delivered to the plaintiff before entering into the MoU would be considered as the first album in the series of six albums mentioned in the Detailed Agreement;
- d. All rights whatsoever to all such albums would vest solely with the plaintiff for the territory of the entire world;
- e. As per the Detailed Agreement, the defendant no. 2 was supposed to complete the delivery of the six albums by July 20, 2012;
- f. Defendant no. 2 would not deal with or deliver the agreed sound recordings to any person or party and that the plaintiff shall have the right of first refusal;
- g. The defendant no. 2 shall not claim any amounts or royalty on any other account except as agreed and mentioned in Clause 6 of the Detailed Agreement;
- h. In the event of any breach, the plaintiff would be entitled to legal remedies such as injunction, damages, etc.

6. The plaintiff submits that in furtherance of the Detailed Agreement, it prepared a Third Assignment Deed with respect the third album which the defendant no. 2 refused to sign on November 2, 2002. A letter dated November 8, 2002 regarding the refusal to sign the Clarificatory Assignment Deed was sent to defendants no. 1 and 2 by the plaintiff. In response, the defendants no. 1 and 2 sent a letter November 12, 2002 through their advocate, claiming that the plaintiff had not paid the royalty for the first and second albums namely, "Nakhre Chadi Jawani Da" and "Rang Badle Talwaran De". The notice also sought a re-negotiation of the payment of royalty for the release of the third album that was handed over by defendant no. 2. The plaintiff responded vide letter dated November 19, 2002 stating that as and when the release of the third album was planned, the consideration amount for it would be sent to defendants no. 1 and 2.

7. Subsequently, vide letter dated January 11, 2003 the advocate for the defendants no. 1 and 2, addressed another Legal Notice intimating the plaintiff that they were terminating the First Agreement, dated December 11, 2001 and falsely alleging that the plaintiff had not made payment for release of the album of defendant no. 3. The plaintiff further submits that the First Agreement dated December 11, 2001, already stood superseded in view of the Detailed Agreement dated July 20, 2002 entered into with the defendant no. 2.

8. It submits that under the cover of a letter dated February 3, 2003 the plaintiff enclosed a demand draft for Rupees One lakh towards full and final payment to defendant no. 2, for the latest album titled "Jogan Ho Gaya Ve" (Third Album). The plaintiff claims that on account of clerical errors, the date on the above stated letter was wrongly typed as January 3, 2003 and also wrongly mentions that the payment was made in respect of the First Album "Nakhre Chadi Jawani Da" instead of the Third Album, "Jogan Ho Gaya Ve". It further clarifies that the consideration for the first album of Rupees Four Lakhs, was already received by defendant no. 2 on December 20, 2001.

9. Further, the plaintiff submits that vide letter dated March 29, 2003, the advocate for defendant nos. 1 and 2 sent a reminder seeking payment for the third album. In response, the plaintiff vide letter dated April 7, 2003 stated that the payment for the said album was sent under the cover of its letter dated February 3, 2003 clarifying that the payment pertained to the third album and not the first. The plaintiff also intimated the defendants no. 1 and 2 that the payment for the third album had been made in full and that the said album would be released. Further, the plaintiff submits that vide a letter dated April 8, 2003 its advocate wrote to the advocate of defendant nos. 1 and 2 in response to the defendant's legal notice dated March 29, 2003. In the said letter it was clarified that the defendants had by way of the Detailed Agreement, negotiated fresh terms under which defendant no. 2. had agreed to assign copyrights in the music album for Rupees One Lakh each. And that this fact had not been communicated to the advocate for the defendant and hence the defendants ought to withdraw their legal notice of March 29, 2003. And that vide a letter dated May 7, 2003, in response to a fax letter dated May 3, 2003 sent by the defendant no, 2, the plaintiff had clarified that payment in full had been made for the third album and that vide another letter dated May 15, 2003 it requested a confirmation from defendant no. 2 that it received the full and final payment for the third album.

10. The plaintiff further submits that in June 2004, it was shocked to discover that defendant no. 3 had released another album titled "Sun Nakhre Waliye" through defendants no. 4 to 6. Upon discovering the same, the plaintiff's advocate sent a notice dated June 26, 2004 to defendant no. 6 informing it that it has illegally and unauthorisedly recorded, released and marketed the album of defendant no. 3, the right of which belonged exclusively to the plaintiff. The said notice also called upon defendant no. 6 to immediately stop manufacturing and marketing the infringing sound recordings and provide an undertaking to that effect.

11. The plaintiff further submits that the Detailed Agreement specifies that the defendant no. 2 would not deliver sound recordings to another party and that the plaintiff had the right of first refusal. It submits that the album released by defendant no. 6 was initially not sent to the plaintiff as required under Clause 7 of the Detailed Agreement, amounting to a breach thereof. The plaintiff contends that upon a close inspection of the inlay card of the infringing album, "Sun Nakhre Waliye", reveals that it was released in concert with all the defendants including defendants no. 1 and 2. The plaintiff further submits that by virtue of the copyright assignment under the Detailed Agreement and Sec. 18 of the Copyright act, 1957 the recording, release and marketing of the infringing album by the defendants amounts to infringement of copyright. And on account of the said infringement, the plaintiff contends to have suffered damages which are not capable of being assessed in monetary terms.

12. The plaintiff submits that the cause of action arose in June 2004 when the

plaintiff first discovered that defendant no. 3 had released the infringing album to defendants no. 4 to 6, with the active participation of defendants no. 1 and 2. And that the cause action further arose on June 26, 2004 when the plaintiff sent a legal notice to defendant no. 6 and that it continues to arise as the infringing cassettes are still being sold in the market.

13. Defendants no. 1 and 2, and defendants no. 4 to 6 have filed separate written statements. Defendants no. 1 and 2 submit that the suit is premature and that the plaintiff has gone beyond the parameters of the Agreements entered between them. And that as per Clause 10 of the First Agreement, the answering defendants were supposed to deliver four master recordings of defendant no. 3 within a period of three years commencing from the date of execution of the First Agreement. It was further agreed that this period shall automatically be extended for another year if for any reason, the answering defendants failed to deliver the agreed master recordings within the fixed period. In furtherance of the same, the answering defendants contend that the plaintiff has jumped to wrong conclusions despite knowing that they were not bound to deliver each and every master recording of the defendant no. 3 as the First Agreement stipulated delivery of only four such recordings.

14. The defendants no. 1 and 2 further submit that the plaintiff and defendant no. 3 have connived against the answering defendants and that defendant no. 3 was not allowed to override the ERA reached by him with the answering defendants, and that he was not supposed to violate or flout the interim injunction order dated August 16, 2003 passed by the Court of the Ld. CJ JD, Ludhiana in the Civil Suit filed by the answering defendant, whereby the following orders was passed in the application for interim injunction:

...Since, the defendant (Romey Gill) has not bothered to file its written statement, his defense stands struck off on 09.08.2003. Application of the plaintiff I allowed for restraining the defendant from performing any stage show without permission of the plaintiff firm (answering defendant).

15. Further defendants no. 1 and 2 state that paragraph 9 of the plaint is admitted as correct. However, the answering defendants submit that the plaintiff has never earlier denied that right of the answering defendants to claim and receive royalty from the plaintiff. The reply dated November 19, 2002 to the written legal notice dated November 12, 2002 sent by the advocate of the answering defendants clearly proves that the plaintiff never denied the right of the answering defendants to the royalty. Furthermore, the answering defendants submit that the plaintiff in its reply to the above mentioned letter did not deny the rightful claim of the defendant to the royalty due to them. And that they showed gross inability to make the payment of Rupees Six Lakhs so agreed earlier vide payment format as narrated in the First Agreement and insisted upon reducing the amount to Rupees One Lakh plus royalty alleging that being a religious album, the plaintiff will be unable to reap usual profits.

16. Defendants no. 1 and 2 admit that they delivered the third album of defendant no. 3 to the plaintiff, but deny that they entered into the Detailed Agreement with the plaintiff, and that the said Detailed Agreement was forged and fabricated. The answering defendants state that the Detailed Agreement was in fact meant for new artistes, and that the defendant no. 3 was not a new artist who was already bound with the answering defendants for a period of 5 years by the agreement dated January 5, 2001. And thus, there was no question of the answering defendants to provide the music of defendant no. 3 to the plaintiff for a period of ten years as per the Detailed Agreement. This fact is further corroborated by the MoU dated July 20, 2002.

17. The answering defendants further contend that the contents of the Detailed Agreement are not enforceable as one of its pages (Pg No. 4) is not signed and that further illegality has been played by the plaintiff which is apparent from the fact that in paragraph 5 of the Detailed Agreement, the plaintiff has made material additions on its own in the shape of "Note" above the signatures of defendants no. 1 and 2. The answering defendants also claim that the alleged agreement is also without consideration because it is not supported by a duly acknowledged receipt. The answering defendants further add that they informed the plaintiff vide letter dated April 8, 2002 about the completion of a third album which was duly acknowledged by a reply dated April 18, 2002. Thereafter, the third master album was sent to the plaintiff under the title "Jogan Ho Gaye Ve" on May 30, 2002 by the answering defendants, but the plaintiff had failed to make any album despite a number of requests and reminders made by the answering defendants.

18. The answering defendants admit that they sent a letter dated January 11, 2003 through its advocates intimating the plaintiff that they were terminating the First Agreement. The answering defendants submit that this letter was sent due to the long and unexplained delay on the part of plaintiff in releasing the third album and subsequent payment of royalty. They further submit that the plaintiff had telephonically informed them that the DD sent on February 3, 2003 of Rupees One Lakh relates to the royalty for the first album. However, they submit that the plaintiff later on malafidely termed the said payment as consideration against the third album.

19. Defendants no. 1 and 2 further submit that they are not bound to deliver the albums of defendant no. 3 to the plaintiff exclusively. They further submit that information qua the fourth album titled "Sun Nakhre Waliye" (infringing album) of defendant no. 3 was conveyed by fax on August 28, 2003 to the plaintiff and thereafter on October 20, 2003 three CDs thereof were sent by Courier to the plaintiff. However, no reply was received by the answering defendants.

20. A written statement was also filed by defendant nos. 4 to 6. They submit that the rights of the infringing album were purchased by them from one Sh. Sukveer Jawanda vide agreement dated January 14, 2004 for a certain consideration. By virtue of which, the defendant nos. 4 to 6 claim that they are the rightful owners

of the copyrights and that the plaintiff has got nothing to do with it. And that on receiving a notice from this Court, the answering defendants enquired about the allegations from Sh. Sukveer Jawanda who stated that he also had purchased the rights in the album from Defendant no. 2 firm vide a Voice Recording Agreement dated May 16, 2002. They further submit that on reading the clauses under the First Agreement, it is nowhere found that defendant no. 3 could not sing for any other company or firm while the said agreement was still in subsistence. And that the only condition in the First Agreement was that four cassettes were to be supplied to the plaintiff for marketing. They further submit that no notice was sent to them by the plaintiff regarding the release of the infringing album.

21. The following issues were framed for trial vide order dated May 9, 2006:

- (1) Whether the suit is liable to be dismissed as being premature? OPD 1 & 2
- (2) Whether the plaintiff and defendants no. 1 and 2 did not enter into a valid assignment deed dated December 11, 2001? OPD 1&2
- (3) Whether the plaintiff is the owner of the copyrights of the songs in the four albums entitled "Nakhra Chadi Jawani Da", "Rang Badle Talwaran De", "Jogan Ho Gaya Ve" and "Sun Nakhre Waliya" produced by defendant no. 2 and performed by defendant no. 3 under the assignment Agreement dated December 11, 2001? OPP
- (4) Whether the plaintiff is the owner of the entire copyright of the songs in six albums to be produced by defendant No. 2 and performed by defendant no. 3 under the assignment Agreement dated July 20, 2002? OPP
- (5) Whether the third music album entitled "Jogan Ho Gaya Ve" delivered by defendant no. 2 was to be considered as the first album under the assignment Agreement dated July 20, 2002? OPP
- (6) Whether by releasing the fourth album entitled "Sun Nakhre Waliye" the defendants have infringed the copyright vesting with the plaintiff? OPP
- (7) Whether by releasing the fourth album of defendant no. 3 entitled "Sun Nakhre Waliye" through defendant nos 4, 5 and 6, defendant nos. 1 and 2 have breached the assignment Agreement dated December 11, 2001 and/or July 20, 2002? OPP
- (8) Whether by releasing the fourth album of defendant no. 3, entitled "Sun Nakhre Waliye" defendant nos. 4, 5 and 6 have induced defendant nos. 1 and 2 to breach the assignment Agreement dated July 20, 2002? OPP
- (9) Whether the assignment of copyright under the assignment agreement dated December 11, 2001 has been revoked by defendant no. 2's letter dated January 11, 2003. OPD2
- (10) If issues 4 to 6 are answered in the affirmative, what relief is the plaintiff, entitled to? OPP

(11) The quantum of damages payable to the plaintiff by the defendants? OPP

(12) Whether the rights purchased by defendants no. 4 to 6 vide agreement dated January 14, 2004 is for a valid and bonafide consideration and if so, to what effect? OPD 4 to 6.

(13) Whether the agreements dated January 5, 2001; March 3, 2001; and March 28, 2001 entered into between defendants no. 1 and 3 are valid agreements and if so, their effect? OPD 1

(14) Whether the agreement dated July 20, 2002 has been forged by the plaintiff or anyone acting on the behest of the plaintiff? OPD 1 and 2.

(15) Relief.

22. Vide an Order dated January 18, 2005 the defendant no. 3 has been proceeded ex-parte. Right of the defendants to lead evidence was closed vide Order dated November 5, 2012. Mr. Devender Kumar Kakkar, Deputy General Manager and Constituted Attorney of the plaintiff company was examined as PW1. Further, vide Order dated August 2, 2004 this Court appointed a Local Commissioner to visit the premises of defendant no. 6 and to make an inventory of inlay cards, number of cassettes, CDs of the infringing album by defendant no. 3.

23. I have heard the Ld. Counsel for the plaintiff and have perused through the records as well as the Report of the Local Commissioner dated August 4, 2004. Issue-wise findings are as recorded below.

Issue No. 1:

24. The first issue addresses the preliminary objection taken by the defendants no. 1 and 2 contending that the instant suit was filed by the plaintiff prematurely. In their written statement, defendants no. 1 and 2 referred to Clause (3) of the Agreement dated December 11, 2001 (First Agreement). The First Agreement is placed on record at Ex. P1 and Clause (3) reads thus:

(3) The assignor (defendant no. 2) shall deliver the said four master recordings of the artist within a period of three years commencing from the date of execution of this agreement. It is agreed that in case for any reasons whatsoever the assignor fails to deliver the agreed master sound recordings in the agreed period then the period of agreement shall automatically be extended for a further period of one year, within which time the assignor shall positively hand over the master recordings to the assignees (plaintiff)

25. The date of execution of the First Agreement was December 11, 2001. Thus as per Clause (3) of the said agreement, the recording was to be completed by December 11, 2004 and this time could be extended by another one year i.e. till December 11, 2005. The instant suit was filed on July 29, 2004. Thus the defendant nos. 1 and 2 contend that since the time frame as provided under the agreement had not expired at the time of filing the suit, it is premature and

ought to be dismissed on those grounds.

26. I find no merit in this contention of the defendants because the plaintiff has not approached this Court seeking specific performance of the agreements between the parties. The cause of action in the instant case is regarding infringement of exclusive rights assigned to the plaintiff through the different agreements executed between the parties. In any event, the defendants no. 1 and 2 have not led any evidence in furtherance of their contention and thus the same ought to be decided against them for lack of evidence.

Issue No. 2:

27. The second issue places the burden on defendants no. 1 and 2 to prove that they did not enter into the First Agreement dated December 11, 2001. At this juncture, it is pertinent to note that the plaintiff has contended that the First Agreement is no longer subsisting and in fact stands superseded/novated by the Detailed Agreement dated July 20, 2002. However, it must be borne in mind that in order to be superseded/novated, the First Agreement must have been duly executed between the parties. A mere perusal of the documents placed on record shows that the First Agreement was signed by the competent persons on behalf of the two parties. A copy of the First Agreement has also been placed on record (Exhibited as P1), which has also been admitted by the defendants no. 1. Furthermore, it is not disputed that the defendant no. 2 provided the first two albums to the plaintiff under the aegis of the First Agreement and also received consideration therefor. Moreover, the defendants no. 1 and 2 have not led any evidence to assail the execution of the First Agreement. Therefore, I find that defendants no. 1 and 2 validly entered into the First Agreement dated December 11, 2001 with the plaintiff.

Issues No. 3 to 9 and 14:

28. I find that Issues No. 3 to 9 and Issue No. 14 are interrelated, since they concern the assignment of copyright in the four albums either under the First Agreement or the Detailed Agreement, and the infringement thereof.

29. Regarding the assignment of copyright to the plaintiff with respect to the four albums i.e. "Nakhre Chadi Jawani Da", "Rang Badle Talwaran De", "Jogan Ho Gaya Ve", and "Sun Nakhre Waliya" the relevant terms are found in Clause 8 of the First Agreement which reads as under:

8) The assignor (defendant no. 2) hereby assigns all the rights including the copyright of Literary work, Dramatic work, Musical work, Cinematograph Film and that of sound recordings (hereinafter referred to as the said works) in favour of the assignee for the territories of World and Universe for the entire period of copyright and the assignee shall be deemed to be the owner of the aforesaid copyrights in respect of the said works, sung/performed by the artist during the period of this agreement.

30. Further, Clause 6 of the agreement provides that at the time of executing the

First Agreement, a consideration of Rs. 11,000/- (Rupees Eleven thousand only) would be paid to defendant no. 2 for the assignment of copyrights as specified under Clause 8. Though the names of the albums were not mentioned in the First Agreement, it specifies the number of albums to be produced by the defendant no. 2.

31. On the release of the first album, i.e. "Nakhra Chadi Jawani Da", the plaintiff entered into the First Assignment Deed dated December 20, 2001. A copy of the said Assignment Deed is exhibited as Ex. P2 and is admitted by the defendant no. 1. It is seen that the said Assignment Deed does not make a mention of the First Agreement dated December 11, 2001. However, in the affidavit by way of evidence of PW1, he stated that the Assignment Deed of December 20, 2001 was a Clarificatory document that corroborated the First Agreement, specifying the name of the album intended to be assigned and also giving in detail various terms and conditions. As per the terms of the First Assignment Deed, the consideration for the first album was Rs. 4,00,000/- (Rupees Four Lakhs Only). The same consideration was specified under Clause 9 of the First Agreement. This to my mind conclusively proves that the First Assignment Deed substantiates the First Agreement. Further, two Receipts/Acknowledgment Slips have been placed on record exhibited as Ex P3 and Ex P4. The said receipts are acknowledgment by defendant no. 1 of payment of the consideration of Rs. 4,00,000/- (Rupees Four Lakhs Only) by the plaintiff for the first album, "Nakhra Chadi Jawani Da". These two documents have also been signed and admitted by defendant no. 1.

32. Similarly, with respect to the second album titled "Rang Badle Talwaran De", the plaintiffs have entered into a Second Assignment Deed dated April 8, 2002 with defendant no. 1 and 2. A copy of the said Assignment Deed is exhibited as Ex P5 and the receipt/acknowledgment slip of consideration of Rs. 1,00,000/- (Rupees One Lakh only) signed by defendant no. 1 is exhibited at Ex. P6. Both these documents have also been admitted by defendant no. 1. Therefore, it is apparent to me that the copyright with respect to the first two albums was assigned to the plaintiff under the First Agreement.

33. Regarding the assignment of the third and fourth albums, it must be noted that there are two distinct contentions put forth by the parties. The plaintiff contends that the First Agreement stood superseded/novated by the Detailed Agreement as on July 20, 2002. And that the third album was to be considered as the first album under the Detailed Agreement, the fourth album as the second, so on and so forth. Meanwhile, defendants no. 1 and 2 assail the Detailed Agreement alleging that it is forged and fabricated. And they also contend that the copyrights for the third and fourth album are not assigned to the plaintiff under the First Agreement either, by virtue of its termination vide Letter dated January 11, 2003. I shall now proceed to examine the validity of the Detailed Agreement.

34. In assailing the Detailed Agreement, defendants no. 1 and 2 contend that

they executed it as a blank agreement assuming that it would only be used for new artists in the future, and did not anticipate that the plaintiff would make the works of Romey Gill, defendant no. 3 the subject matter of the said Agreement. The defendant has also stated that its initial ERA with defendant no. 3 was only for a period of 5 years, and whereas the Detailed Agreement with the plaintiff stipulated that the defendant no. 2 would exclusively provide all the albums of defendant no. 3 for a period of 10 years. Further, the defendants also contend that the Detailed Agreement cannot be enforced against them because page 4 of the said agreement is not signed by defendant no. 1, and that the plaintiff has illegally made additions in the last page in the form of a "Note" right above the signatures of the executing parties as well as witnesses.

35. I have perused through the Detailed Agreement dated July 20, 2002 which is placed on Record as Ex. PW1/3. It is also seen that on the same date as the execution of the Detailed Agreement, defendant no. 2 entered in to an MoU with the plaintiff, through its Managing Director, Mr. Onkar Singh (defendant no. 1). The said MoU is placed on record as P7, and has also been admitted by defendant no. 1. As per the said MoU, the parties decided that the defendant no. 2 will first offer their artists to the plaintiff for recording their albums. And only upon the plaintiff's written rejection would the defendant be entitled to assign the copyrights to any other third party. The consideration for this assignment was agreed at Rs. 1,00,000/- (Rupees One Lakh only) for the agreed period per master album.

36. Upon a careful examination of the Detailed Agreement, it is seen that the defendant no. 1 has affixed his signature at the bottom of all the pages of the agreement barring page no. 4. It is also seen that the defendant no. 1 has affixed his signature on the right hand margin of the pages of the agreement right next to clauses which either contain blanks that are handwritten or contain operative clauses such as consideration. In the first page, it is seen that the agreement mentions defendant no. 3 as the "Artiste" in handwritten font along with the signature of defendant no. 1 in the margin. The third page stipulates that consideration of the six albums to be at Rs. 1,00,000/- (Rupees One Lakh Each) and also states:

The Assignors shall not claim any amount or royalty on any other account from the Assignees except as agreed and mentioned in this Agreement.

Defendant no. 1 has affixed his signature against the paragraph containing the consideration clause as well.

37. As contended by the defendants, there is no signature on the fourth page of the agreement. However, the fifth and last page of the agreement is duly signed by the executing parties as well as the witnesses. The fifth page also contains a note right above the signatures of the parties, stating:

Note: It is clarified that after the release of album "Nakhra Chadhi Jawani Da" a meeting was held and the Assignor, in view of previous market conditions, has

renegotiated the consideration amount and has now agreed to charge the consideration amount of each album as detailed in Clause 6 of this agreement. The parties have agreed that this agreement shall supersede all other agreements including agreement dated 11.12.2001 and the Master handed over by the Assignor shall be deemed to be under Clause 6(a) of this Agreement.

38. In the absence of the evidence from the witnesses as well as the signatories of the Detailed Agreement, I am left with no other option but to rely upon the conduct of the parties as well as other correspondences between them, to determine the veracity of the Detailed Agreement. At the outset, it must be noted that the First Agreement stipulated that defendants no. 1 and 2 shall deliver four albums in the voice of defendant no. 3 for the following consideration:

- a. First Album-Rupees Four Lakhs
- b. Second Album-Rupees Six Lakhs
- c. Third Album-Rupees Eight Lakhs
- d. Fourth Album-Rupees Ten Lakhs

However, it is pertinent to note that though the plaintiff paid a consideration of four lakhs for the first album, as agreed; there was a renegotiation of the consideration for the subsequent album. This is further evidenced by the fact that the parties renegotiated the consideration for the second album vide the Second Assignment Deed dated April 8, 2002. The "Note" mentioned in the final page of the Detailed Agreement is also in consonance with the renegotiation. I am also inclined to reject the argument of the defendant that the MoU was only executed with respect to new artists. The MoU does not stipulate anywhere that it would govern only new artists. In any event, the First Agreement is superseded/novated by the Detailed Agreement, which albeit was entered in pursuance of the MoU, but is a separate contract by itself. Moreover, the Detailed Agreement was executed on the same date as the MoU. From the aforesaid observations, it is apparent to me that the Detailed Agreement was validly executed, thereby superseding/novating the First Agreement. And therefore, I find that the copyrights for six albums in the voice of defendant no. 3, starting with the album "Jogan Hogaya Ve", were assigned by defendant no. 2 to the plaintiff.

39. In such a circumstance, it becomes apparent that the release of the album "Sun Nakhre Waliye" by defendants no. 4 to 6 would amount to infringement of the copyright in the said album, as assigned to the plaintiff under the Detailed Agreement, unless it is shown that the Detailed Agreement was terminated or revoked by the defendants before the release of the infringing album.

40. It is seen from the communications between the parties that a dispute arose regarding the payment of consideration for the album "Jogan Hogaya Ve". A letter was sent by the plaintiff to defendant no. 1 on November 8, 2002, informing it that a representative of the plaintiff was sent to their office with a

Clarificatory Assignment Deed dated November 2, 2002 and a Demand Draft No. 263590 for payment for the third album titled "Jogan Ho Gaya Ve". The letter also stated that the defendant no. 1 did not sign the said Clarificatory Assignment Deed. This letter further informed defendant no. 1 that the plaintiff would be releasing the third album within the last week of November 2002. This letter is exhibited as Ex P8 and it has also been admitted by the defendant no. 1. It is seen that in response to this letter, the counsel for defendant no. 2 has served a legal notice dated November 12, 2002 upon the plaintiff stating that the plaintiff was in violation of the First Agreement, and also called upon the plaintiff to negotiate the payment of royalty before releasing the third album. Thereafter, the plaintiff has replied to this Legal Notice vide Letter dated November 19, 2002 stating that the consideration amount shall be paid at the time of release of the album. In response to this letter, the counsel for defendant no. 1 wrote a letter dated January 11, 2003 terminating the First Agreement dated December 11, 2001 on the grounds that the plaintiff did not pay royalties for the albums of defendant no. 3 as well as one Mr. Jinder Jinda. Although, the plaintiff has claimed that it duly paid the royalty vide a Pay Order dated February 3, 2002, a copy of which is placed on record as Ex. P10.

41. From the aforesaid series of events, it is apparent to me that the defendant no. 1 has neither terminated nor revoked the Detailed Agreement. Instead, the defendant no. 1 has repeatedly sought to terminate the First Agreement. As noted above, I am of the opinion that the First Agreement ceased to exist between the parties upon the execution of the Detailed Agreement, which clearly superseded all other agreements between the parties. Therefore, I am inclined to find that the Detailed Agreement was still subsisting at the time of the release of the infringing album.

42. Since defendants no. 4 to 6 have released the infringing album in the voice of defendant no. 3 during the subsistence of the Detailed Agreement, irrespective of whether or not the said defendants entered into the Agreement dated January 14, 2004, they have infringed upon the exclusive copyright held by the plaintiff by virtue of the Detailed Agreement. Moreover, in the Written Statement of defendants no. 4 to 6, it is submitted that they purchased the rights to the works of defendant no. 3 from one Mr. Sukhveer Jawanda. It can be seen that as on May 16, 2002, the defendant no. 2 had entered into an assignment deed with the said Mr. Sukhveer Jawanda for the same songs/albums that it had assigned to the plaintiff. Therefore, I find that the defendants no. 1 and 2 are liable for breach of the Detailed Agreement. I also find that defendants no. 4 to 6 are liable for infringing the copyright which was exclusively assigned to the plaintiff. As far as defendant no. 3 is concerned, defendant no. 2 has placed on record, an Order of the Senior Judge (Civil Division), Ludhiana dated August 16, 2003 granting an interim injunction in favour of defendant no. 2 and against defendant no. 3 finding that the latter had breached the ERA between them dated March 3, 2001 and restraining defendant no. 3 from performing any stage show without permission of the plaintiff. Therefore, it is clear to me that the defendant no. 3

has also not honoured the ERA between them, which issue is to be finally decided by the appropriate Court. However, since the defendant no. 3 is not privy to the Detailed Agreement, he cannot be held liable for its breach or inducement to breach thereof.

43. In the backdrop of the afore-noted findings, I find that Issues 3 to 8 along with Issue 14 are found to be in favour of the plaintiff. I also find that it is irrelevant to determine the outcome of Issue 9 regarding proper termination of the First Agreement, because as noted earlier, it is apparent to me that the First Agreement was superseded/novated by the Detailed Agreement. Similarly, I also find that determination of Issues 12 and 13 are immaterial to the outcome of the instant suit.

44. Deciding issues 10 and 15, which are regarding the relief claimed, it is seen that the plaintiff has prayed for damages to the tune of Rs. 5,05,000/- (Rupees Five Lakh Five Thousand only), contending that the defendants cannot evade liability by way of not providing the accounts or leading any evidence. And specially in cases where the defendants have been proceeded ex parte and evaded submitting the accounts, the Court should impose punitive damages. The plaintiff has relied upon the decision of this Court in Indian Performing Right Society Ltd. Vs. Debashis Patnaik and Others, ; The Himalaya Drug Company Vs. Sumit, ; Relaxo Rubber Limited and Another Vs. Selection Footwear and Another, ; L.T. Overseas Ltd. v. Gujarat Trading Co. & Anr., 2005 (31) PTC 254 (Del); Hero Honda Motors Ltd. Vs. Shree Assuramji Scooters, .

45. Clause 16 of the Detailed Agreement entitles the plaintiff to the following reliefs in the event of a breach:

In case of breach of any term and condition of this Agreement by the Assignors, the Assignees shall have the right to recover such damages, as may be assessed by the Assignees, from the Assignors and/or from any other party in favour of whom the Assignors may have assigned the rights or may have delivered the Master-Sound Recordings In the voice of the said Artiste or have released the said Sound Recording(s) on their own. Claim of such damages shall be without prejudice to all or any other legal remedy including injunctions etc. that may be available to the Assignees.

(emphasis supplied)

I find that the precedents mentioned above are not applicable to the instant case, because in the instant case, the plaintiff has not led evidence to prove punitive loss. The plaintiff has merely asserted punitive loss and I am not inclined to grant damages in the absence of evidence to prove it. As for the other reliefs prayed for the plaintiff, I hereby grant a permanent injunction against the defendants from releasing, selling, recording, distributing, publicly performing, broadcasting or in any other manner exploiting the copyright in the album "Sun Nakhre Waliye" and its underlying works or any future album/musical/literary works of defendant no. 3, thereby infringing the plaintiff's copyright in it as

assigned under the Detailed Agreement. I also order the defendants to render the all accounts of profits earned with respect to the infringing album and also delivery up of all infringing materials pertaining to the infringing album. Decree be drawn accordingly.