

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
(COMMERCIAL DIVISION)**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 322 of 2025

The Indian Performing Right Society Limited

Vs.

Hotel Appolo & Tours Private Limited

With

CAN 1 of 2025

For the appellant : Mr. Soumya Roychowdhury, Adv.
Ms. Samina Khanum, Adv.
Ms. Gauti Khanna, Adv.
Ms. Riddhima Sharma, Adv.

For the respondent : Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Suhrid Sur, Adv.
Mr. S. Roy, Adv.

Hearing concluded on : 01.07.2026

Judgment on : 04.08.2026

Md. Shabbar Rashidi, J.:-

1. The appeal is directed against order No. 18 dated September 20, 2024 passed in O.C. Suit No. 09 of 2023 (CIS No.01 of 2023).

2. By the impugned order the learned District Judge, Darjeeling rejected the application of the appellant/plaintiff under Order XXXIX Rules 1 & 2 of the Civil Procedure Code and refused to grant temporary injunction in its favour.

3. It was submitted by learned advocate for the appellant that the impugned order is erroneous and has been passed completely overlooking the provisions of Copyright Act, 1957. The learned District Judge failed to appreciate that a license from the appellant under the provisions of the Act of 1957 was mandatory for commercial exploitation of the literary and musical works owned by the members of the appellant. Referring to Section 2(ff) of the Act, it was submitted by learned advocate for the appellant that the respondent/defendant was communicating to the public, the literary and/or musical works owned by the members of the appellant by providing the same in hotel rooms through cable connections meant to be viewed by the guests on the TV sets installed in such rooms. To such proposition, learned advocate for the appellant placed reliance on **2008 SCC OnLine Del 360 (Supercassette Industries Vs. Nirula Corner House (P) Ltd.)**.

4. The learned advocate for the appellant contended that such dissemination of the literary and/or musical works owned by the members of the appellant, amounts to infringement of copyright. It

was also argued that the learned District Judge failed to appreciate that the respondent was engaged in unauthorized communication of the literary and musical works of the members of appellant, to the public at large. The learned Trial Judge erroneously equated the payment of cable subscription fee with the license fee payable to the appellant in terms of the provisions of the Act of 1957 and passed the impugned order. Learned advocate for the appellant further submitted that the learned Trial Court committed error in holding that the appellant had muddled copyright with broadcasting rights envisaged under Section 14 and Section 37 of the Act. The two rights are distinctly recognized under the provisions of the Act of 1957. In support of such contention, learned advocate for the appellant relied upon **2026 SCC OnLine Cal 5736 (Vodafone Idea Limited Vs. Indian Performing Right Society Limited)**.

5. Learned advocate for the appellant further submitted that the learned Trial Court failed to appreciate that in terms of the provisions contained in Section 39A of the Act of 1957, broadcast reproduction rights do not alter the rights of copyright holder. It was contended that the respondent is not a broadcasting organization and cannot avail the benefits under Section 37 of the Act.

6. Per contra, learned senior advocate for the respondent submitted that the respondent has subscribed few cable connections which it provided in each of the hotel rooms for viewing by the guests occupying such rooms. Since, the respondent has already paid cable connection charges to the cable operator who was holding broadcast reproduction rights; the respondent is not liable to pay royalty to the appellant for the literary and musical works. The respondent also relied upon the definition of 'communication to the public' enunciated in Section 2(ff) of the Copyright Act, 1957 to contend that the cable operator had the rights of communication to public which he disseminated through cable network. The respondent purchased such right from the cable operator and therefore, was not liable to pay again to the appellant.

7. Learned senior advocate for the respondent further submitted that the appellant cannot claim and charge twice for the same literary and musical work, once it has sold the same to cable operator. It was also contended that making the content available for viewing by the guests staying in hotel rooms through the television sets installed there after obtaining the cable connection from the operator does not amount to 'communication to public' within the meaning of Act of 1957. The respondent was not making

use of the contents in direct show to the public rather it was made available in the rooms of the hotel.

8. Learned senior advocate for the respondent also submitted that in the facts of the case, it is presumable that the cable operator has paid the royalty to the appellant. The said cable operator or the Multi System Operator has not been impleaded in the suit. He also contended that the provisions of Cable Television Network (Regulation) Act, 1995 and Rules thereunder, renders it obligatory on the part of the cable operator to obtain license from the owner of literary or musical work. The broadcaster who has obtained services from the cable operator is under no responsibility to pay royalty for such work. The learned advocate for the respondent referred to various provisions of the Cable Television Network (Regulation) Act, 1995, Rules thereunder and that of Copyright Act, 1957 to contend that the since the respondent was not rebroadcasting the literary or musical work owned by the members of the appellant to be viewed by the public, the respondent is not liable to pay royalty to the appellant. The learned Trial Court rightly refused temporary injunction.

9. The appellant/plaintiff is a limited liability company registered under the Companies Act, 1996 and was established as a non-profit making body registered with Copyright Society. By virtue

of an Assignment Deed executed by the members of the appellant, the members of the society assigned their 'communication to the public' and public performing rights as well as mechanical rights in respect of their past and present literary and/or musical works including such literary and musical work which they may author or own in future in favour of the plaintiff.

10. The defendant/respondent, namely, M/s. Hotel Appolo & Tours Private Limited is a private limited company and, as such, it has been engaged in hotel business and operates its business under the name of Appolo Hotel.

11. The defendant has been publicly performing/communicating to the public, the literary and musical works belonging to the members of the plaintiff in their hotel without obtaining a proper and valid licence from the plaintiff and without paying the requisite royalties which, according to the appellants, amounted to infringement of plaintiff's rights. It was the case that TV sets on each room of the hotel were provided by the respondent. It was contended that communications to the public of works through satellite or cable or any other means of simultaneous communication in hotel rooms without a licence from the copyright owner amounts to an infringement of copyright. The respondent provided TV sets in each room of the hotel and obtained cable

connection through which the literary and musical works belonging to the members of the appellant company were disseminated without obtaining the required licence from the appellant. Such actions on the part of the respondent surely come within the ambit of public performance/communication to the public and commercial exploitation of literary and musical works belonging to the members of the appellant company. By letters addressed to the respondent, the appellant tried to persuade the respondent to obtain the requisite licence upon payment of royalty which was denied by the respondent. The respondent also failed and neglected to obtain such licence from the appellant company.

12. As noted above, the respondent/defendant came up with a case that he had secured cable connections for each of the rooms in the hotel on payment of the cable network connection fee. As such, the respondent/defendant was not liable to pay separate royalty to the appellants. It was submitted that the appellant company was entitled to its royalty from the cable operator and not from respondent/defendant hotel.

13. In such conspectus, the appellant filed a suit being OC Suit NO. 9 of 2023 praying for the following reliefs:-

“a) A Decree of Permanent Injunction restraining the Defendant and its directors, proprietors, principal officers, servants agents, assigns and representatives and all others

acting for an on its behalf from themselves engaging in or authorizing the public performance/communication to the public of the Plaintiff's repertoire of literary and musical works or any works belonging to the Plaintiff's sister copyright societies, in any form or manner whatsoever, including as part of sound recordings or doing any other act amounting to an infringement of the Plaintiff's copyright in the said works;

b) A Decree of Permanent Injunction restraining the Defendant from publicly performing and/or communicating to the public works created by the author members of the Plaintiff without paying the Authors Statutory Royalty to the Plaintiff;

c) A Decree directing rendition of Accounts of Profit illegally earned by the Defendant on account of the Defendant's infringing activities in violation of the Plaintiff's copyright through the unauthorised utilization and exploitation by way of public performance and/or communication to the public of the underlying literary or musical works belonging to the Plaintiff's repertoire or in any other manner whatsoever;

d) A Decree for Damages of Rs. 9,00,000/- to be passed in favour of the Plaintiff and against the defendant including compensatory/actual damages and exemplary/punitive damages payable to the Plaintiff. The Plaintiff reserves its right to claim additional damages as and when these are computed and hereby undertakes to pay additional court fees as and when directed. This claim is without prejudice to the Plaintiff's contention that the damage being caused by the Defendant is not compensable in monetary terms'

e) A Decree for Cost of these proceedings in favour of the Plaintiff and against the Defendant."

14. With the filing of the aforesaid suit, the plaintiff/appellant also filed an application under Order XXXIX Rules 1 and 2 as well as Section 151 of the Civil Procedure Code. On the basis of facts narrated in the plaint reiterated in the petition under Order XXXIX Rules 1 and 2 of the Civil Procedure Code, the appellant prayed for the following reliefs:-

- a) *“Grant and order of ad interim injunction restrain the Defendant and its directors, proprietors, principal officers, servants, agents, assigns and representatives and all others acting for an on its behalf from either engaging in themselves or authorizing the public performance/communication to the public, of the Plaintiff’s repertoire of literary and musical works, or any works belonging to the Plaintiff’s sister copyright societies, in any form or manner whatsoever including as part of sound recordings, or doing any other act amounting to an infringement of the Plaintiff’s copyright in the said works without a licence from the Plaintiff;*
- b) *Grant an order of ad interim injection restraining the Defendant and its directors, proprietors, principal officers, servants, agents, assigns and representatives and all others acting for an on its behalf from public performing and/or communicating to the public works created by the author members of the Plaintiff without paying the Authors Statutory Royalty to the Plaintiff;*
- c) *Grant ex-parte order in terms of prayers (a) and (b) above;*

d) Pass such other/further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in the interest of justice."

15. Apparently, the respondent has been running a hotel business. The respondent provided cable connections obtained from the cable operator in each room of the hotel. It is alleged that the literary and musical works obtained by the members of the appellant company were displayed in the rooms through such cable connections over the TV sets installed in the rooms of the hotel. According to the case made out by the appellant, the dissemination of cable connection in each room of the hotel through TV sets is an act of 'communication to public' within the meaning of provision contained in Copyright Act, 1957. On the contrary, it was the contention of the respondent/defendant that it had subscribed to the cable connection for each room of the hotel and such content was viewed by the guests in the room of the hotel through such connection. The content of the cable connections is decided by the cable operator which has obtained a valid licence from the appellant. Therefore, the respondent is not liable to obtain a separate licence from the appellant for literary and musical works belonging to the members of the appellant; such licence has already been obtained by the cable operator.

16. In view of the rival contentions made by the parties, learned Trial Court dismissed the application under Order XXXIX Rules 1 and 2 of the Civil Procedure Code, refusing to grant injunction. The learned Trial Court, while deciding the injunction application held as follows:-

“On perusal of the materials on record coupled with the legal precedent as placed by the parties to the proceedings, I am of the opinion that as per provision u/s 37 of the Copyright Act the Broadcasting Right is different and the plaintiff has no right to challenge the Broadcasting Right in a suit and in this connection, the argument as advance by the Ld. Counsel for the defendant is totally justified. The defendant in his written objection stated that he has no involvement in alleged use of Copyright music belonging to the plaintiff. So prima facie it is not in the hands of plaintiff for granting of temporary injunction in favour of the plaintiff. Other cardinal principle relating to grant of temporary injunction are also not in favour of the plaintiff. Therefore the temporary injunction application filed on behalf of the plaintiff is hereby dismissed on contest.”

17. Section 2(dd) of the Copyright Act, 1957 defines broadcast. It says as follows:-

“2(dd) “broadcast” means communication to the public—

- (i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or*
- (ii) by wire, and includes a re-broadcast”*

18. Section 2(ff) of the Copyright Act, 1957 defines communication to the public which reads as follows:-

“2(ff) “communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

Explanation.— For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public”

19. It is not in dispute that the appellant/plaintiff or its members are the first owner of the literary and/or musical work under reference in the present proceeding, in terms of Section 17 of the Act of 1957 and it is mandatory that the right must have been validly assigned in accordance with the provisions of Section 18 and 19 of the Act by the owner. Section 30 of the Act of 1957 deals with the grant of licence. It reads thus,

30. Licences by owners of copyright. — The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the

right by licence in 5 [writing by him] or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation. — Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

20. Admittedly, no licence under Section 30 of the Act of 1957 was obtained by the respondent from the appellant. It has been asserted that since such licence was obtained by the cable operator, the respondent is not required to obtain licence afresh. He has been utilizing the literary/musical works belonging to the members of the appellant organization under the licence granted in favour of the cable operator. It was the contention of respondent/defendant that it obtained cable network connection from the cable operator and was displaying the cable network program in the hotel rooms with a view to be watched by the guests staying in such rooms. According to them, the action of the respondent does not fall within the meaning of 'broadcast' or 'communication to public' within the meaning of the Copyright Act, 1957. Therefore the respondent was not required to obtain separate licence from the appellant.

21. Section 2 of the Cable Television Networks (Regulation) Act, 1996 defines Cable Television Network, Cable Operator and Cable services to the following terms:

2. (a).....
- (aa) *'cable operator' means any person who provides cable service through a cable television network or otherwise controls or is responsible for the management and operation of a cable television network;*
- (b) *'cable service' means the transmission by cables of programmes including re-transmission by cables of any broadcast television signals;*
- (c) *'cable television network' means any system consisting of a set of closed transmission paths and associated signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers;*

22. A cable television network is a set of closed transmission paths and associated signal generation aimed at providing cable services for reception by multiple subscribers. In that view of the facts, the respondent subscribed to a few cable services in the hotel rooms from the cable operator. It would be appropriate to examine as to how far the respondent could have utilized the cable network services subscribed by it. The term 'subscriber' has also been defined, in the context, under Section 2 (i) of the Act of 1995, which says:

- (i) *'subscriber' means a person who receives the signals of cable television network at a place indicated by*

him to the cable operator, without further transmitting it to any other person.

23. In view of such definition assigned to the term ‘subscriber’, the respondent subscribed the ‘cable services’ from the ‘cable operator’, its user ought to have been confined to the respondent without it being transmitted to any other person. In the case at hand admittedly, the services were meant to be utilized by persons other than the subscriber i.e. the guests staying in the rooms of the hotel.

24. In **Vodafone Idea Limited** (supra), it was noted that,

“68. In the context of copyright existing in the underlying literary and musical work in a sound recording forming part of a cinematograph film or a non-cinematograph film songs Section 13(4) of the Act of 1957 has stipulated that, copyright in the cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or substantial part of which, a film, or, as the case may be, a sound recording is made. Read with Section 19(10) of the Act of 1957, Section 13(4), in our understanding, has, in fact, recognized that, copyright in the underlying literary and musical works in a sound recording both in case of cinematograph film or a sound recording shall exists. Since, Section 13 of the Act of 1957 has recognized the existence of such right, while Section 19(9) and (10) have ensured that, no assignment of copyright in any work to make a cinematograph film or to make a sound recording shall affect the right of the author to claim an

equal share of royalties and consideration payable in case of utilization of the work.

69. In our understanding, therefore, the Act of 1957 has recognized the right of the author of literary and musical work in a sound recording to receive royalties and consideration in the event, sound recording is used for commercial exploitation other than when, such sound recording is forming part of cinematograph film which is exhibited in a cinema hall. Therefore, author of underlying literary and musical work in a sound recording is entitled to royalties and other consideration when such sound recording is commercially exploited. Same and except when, a sound recording forms part of cinematograph film and such cinematograph film is exhibited in a cinema hall.”

25. Sections 51 and 52 of the Copyright Act, 1957 enumerate the acts, which constitute and do not constitute infringement of copyright. It would be apposite to set out the relevant provisions of such Sections for proper adjudication, that is to say:

“51. When copyright infringed. — Copyright in a work shall be deemed to be infringed—

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person—

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or (iv) imports into India, any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation. — For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”

52. Certain acts not to be infringement of copyright.— (1) The following acts shall not constitute an infringement of copyright, namely,—

(a) a fair dealing with any work, not being a computer programme, for the purposes of—

.....

(k) the causing of a recording to be heard in public by utilising it, —

- (i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or*
 - (ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;*
- (l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;”*

25. Section 52(1)(k) differentiates between residential premises and hotel. It also draws a distinction between activities carried on for profit from that being not for profit, in order to determine the act of infringement. In the present case, cable services were provided to the paid guests in the hotel for amusement. May be the respondent was not charging for such services separately but such services were surely additional facilities to the guests which had the effect of adding commercial value to the business of the respondent. In such way, the actions on the part of the respondent surely fell within the meaning of ‘commercial exploitation’ of the literary and musical

works owned by the members of the appellant. The cable operator, by obtaining licence, was within his right to broadcast such work, owned by members of appellant society, through the cable television network which was limited to its subscriber. The same could not have been transmitted as a commercial amenity directed to be used by 'any other person' other than the subscriber. We are not in a position to accept that the guests staying in hotel rooms of the respondent are 'subscribers' within the meaning of Section 2 (i) of the Act of 1995.

26. In ***Supercassette Industries*** (supra), it was observed that,

*“20. While on the subject, it may not be out of place to observe that the two categories ‘hotels’ and ‘similar commercial establishment’ gives a clue to Parliamentary intention to exclude the operation of such categories of establishments from the benefit of what are obviously deemed not infringements! Such provisions should receive a restricted interpretation, having regard to the nature of the expressions used. Thus, the Court will not extend the law beyond its meaning to take care of any perceived broader legislative purpose. Here “strict” means merely that the Court will refrain from exercising its creative function to apply the rule announced in the statute to situations not covered by it [See *Bipinchandra Parshottamdas Patel v. State of Gujarat*, (2003) 4 SCC 642; *Thampanoor Ravi v. Charupara Ravi*, (1999) 8 SCC 74]. Obviously therefore, all establishments cannot come within the fold of the expression. There can even be a class of situations where it can conceivably be argued that the service provided is so*

integrally connected with the communication to the public, that it may not fall within Section 51. As held in Hubbard v. Vosper, 1972 (1) All ER 1072 the Court must consider the question of proportions, in the case of a copyright infringement action. Therefore, for instance, the placing of a common television in a motel reception, accessible to all but without keeping a television set, in each hotel room, or placing such a set in a grocery shop for the recreation of the owner, or a wayside restaurant, may not fall within the mischief of the definition of infringement. Proportion in this context, would necessarily imply the nature of the activity of the establishment and the integral connection the infringement complained of has with it. Likewise, the use of television or radio in a city bus can be contrasted with such use in an aircraft.

21. In the light of the above discussion, it cannot be said that the plaint does not disclose any cause of action; equally, the Court cannot go behind the pleadings to hold that the materials or pleadings do not disclose any triable cause of action [Ref. Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510]. It has also been held that there cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. The Court cannot reject a part of the plaint, if defects are noticed in it for any reason: Raptakos Brett and Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184. Therefore, the defendant's application for rejection of plaint cannot succeed; it has to fail.”

27. Therefore, on the basis of the discussions made hereinabove, we are of the opinion that the respondent was guilty of

infringement of copyright of literary and musical works owned by the members of the appellant society in view of the provisions contained in Section 51 of the Copyrights Act, 1957. The learned Trial Court was not justified in holding that the appellant/plaintiff failed to make out a *prima facie* case. In fact, the appellant made out a strong *prima facie* case. Moreover, for the reasons stated above, balance of convenience and inconvenience is tilted in favour of the plaintiff. Since the respondent is held to be commercially utilizing the literary and musical works owned by the members of the appellant society without paying the requisite royalty, it would have the effect of irreparable loss and injury to the appellant.

28. In such view of the matter, we set aside the impugned order. The application under Order XXXIX Rule 1 & 2 read with Section 151 of the Civil Procedure Code filed by the appellant/plaintiff on May 18, 2023 stands allowed. There will be an order in terms of prayer a) and b) of the application under Order XXXIX Rule 1 & 2 read with Section 151 of the Civil Procedure Code.

29. Consequently, the instant appeal being FMA 322 of 2025 is hereby allowed, however, without any order as to costs. Connected applications, if any, shall stand disposed of.

30. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

31. I agree.

[DEBANGSU BASAK, J.]