

(2010) 04 DEL CK 0363
In the Delhi High Court
Case No : CS (OS) 1014 of 2004

The Indian Performing Right Society Ltd.	APPELLANT
Vs	
Mr. Badal Dhar Chowdhry and Others	RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Copyright Act, 1957 — Section 33, 62(2)

Citation : (2010) 43 PTC 332

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Jagdish Sagar, for the Appellant; Somnath Mukherjee, for Defendants 2 and 3, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff, registered as a Copyright Society u/s 33 of the Copyright Act, 1957 has instituted this suit against one Mr. Badal Dhar Chowdhry (Defendant No. 1), the Calcutta Improvement Trust (Defendant No. 2) and the State of West Bengal (Defendant No. 3) for the relief of permanent injunction to injunct the Defendants from using the musical works in which the plaintiff Society has a copyright. It is inter alia the case of the plaintiff that Defendant No. 1 is an organizer of live shows involving the exploitation/public performance/communication to the public of literary and musical works; the Defendants 2 and 3 have premises which are leased out by them to organizers such as the Defendant No. 1 for shows which involve the use and communication to the public of music. The plaintiff contends that the Defendants in the shows organized by them/permitted to be organized by them, cannot play music in which the plaintiff claims copyright, without authorization from and payment to the plaintiff.

2. The Defendant No. 1 did not appear despite service and has been proceeded against ex parte. The Defendants No. 2 and 3 filed a written statement. By order dated 18th July, 2006, on the application of the plaintiff for interim relief, the Defendants were restrained from using or permitting use of their premises and/

or any other auditorium owned or administered by the Defendants 2 and 3 to be used to communicate musical works by live performance or by playing recorded music to the public in violation of the plaintiff's copyright and without ensuring that the plaintiff has authorized the said event.

3. On 11th July, 2008, after hearing the counsel for the parties and perusing the written statement of the Defendants No. 2 and 3, it was found that the Defendants No. 2 and 3 are not really contesting the suit. In the circumstances aforesaid, need was not felt to strike issues in the suit. The counsel for the Defendants No. 2 and 3 however stated that the Defendants No. 2 and 3 need to formulate rules for securing the copyright claimed by the plaintiff and in that regard required the assistance of the plaintiff. This Court found that the only assistance which the plaintiff could render to the Defendants No. 2 and 3 in this regard was to make available to the Defendants No. 2 and 3 the list of Artists and Works in which the plaintiff claims rights so that the Defendants No. 2 and 3 do not become privy to the infringement thereof. The counsel for the plaintiff and the counsel for the Defendants No. 2 and 3 were thus directed to take instructions in this regard and it was further observed that the suit would also be disposed of in terms thereof. On the next date further time was sought for taking instructions and for responding to the suggestion of this Court. However, upon no instructions/comments forthcoming, arguments were heard from the counsel for the plaintiff and the counsel for the Defendants No. 2 and 3 and orders reserved. The counsel for the plaintiff has also filed synopsis of submissions with copies of the judgments relied upon.

4. The plaintiff is a non-profit making body, to monitor, protect and enforce the rights and interest and privileges of its members comprising of authors, composers and publishers of literary and/or musical works as well as on behalf of the members of other sister societies who are also claimed to be the owners of copyright in literary and musical works. The plaintiff claims to be the sole representative of such artists and musical work, not only from India but also from the entire world. The plaintiff society claims to be affiliated to 200 societies, in the world, of authors and composers. The authors, composers and publishers of Indian literary and musical works, who are members of the plaintiff society are stated to have executed deeds assigning the public performing rights that exist in respect of their literary and musical works and which they may produce in future in favour of the plaintiff society. Though the plaintiff claims rights in musical works and against infringement of copyright wherein injunction is claimed in the present suit but neither in the plaint nor otherwise, has the plaintiff disclosed as to what are the said literary/musical works in which it has a copyright. Upon the same being enquired from the counsel for the plaintiff, the counsel states that the plaintiff has copyrights for public performance in nearly all musical works emanating not only from India but also from all over the world. However the fact remains that the counsel is unable to make a statement that there is no music in which the plaintiff does not have a copyright.

5. This Court being of the opinion that no vague, in-determinative and indefinite injunction can be issued, asked the counsel for the plaintiff to furnish to the Defendants the list of the musical works in which it has a copyright. Though time was taken to seek instructions in this regard but no such list was furnished. It was put to the counsel for the plaintiff that in the present day and time, there must be a database recorded in electronic media of the musical works in which the plaintiff claims copyright and even if it was physically impossible for the plaintiff to furnish list of such works, the plaintiff should give particulars of the said electronic database or website from which the Defendants could know the works in which the plaintiff has a copyright. The plaintiff has been unable to fulfill the said requirement also.

6. In the circumstances, the counsel for the plaintiff was called upon to address on the aforesaid limited aspect of the possibility of issuance of an injunction restraining the Defendants from violating the works in which the plaintiff has a copyright, without furnishing the list of works in which the plaintiff has a copyright. The counsel in oral or written arguments has not been able to satisfy this Court as to how such a vague and indefinite injunction can be issued.

7. The court ought not issue an injunction which is vague or indefinite. Breach of injunction has serious consequences for the violator. However, before the Defendant can be so enjoined, the Defendant ought to be made aware of the precise act which he is prohibited from doing. A vague injunction can be an abuse of the process of the court and such a vague and general injunction of anticipatory nature can never be granted. Lord Upjohn in *Redland Bricks Ltd. v. Moeris* (1970) A.C. 652 observed that a defendant is entitled to know what he is required to do or to abstain from and this means not as a matter of law but as a matter of fact. The Division Bench of this Court also in *Time Warner Entertainment Company, L.P. and Others Vs. RPG Netcom and Others*, has held that a vague order of injunction which is uncertain in its application and likely to cause confusion should not be passed; it will be impossible for the courts to ensure implementation and compliance without the Defendant or the court knowing as to which works the injunction applies. Reliance was further placed on *Columbia Picture Industries v. Robinson* (1987) Ch. 38.

8. Though there is precedent for injuncting others than those impleaded in the suit and who may be found violating the rights, in the field of trade mark/copyright and what has commonly come to be known as John Doe/Ashok Kumar orders, but in that case also the mark or the work with respect where to injunction is issued is identified. In the present case, the plaintiff is unable to identify the works in which it has rights and with respect where to the Defendants are sought to be restrained.

9. Though the plaintiff claims that it has copyright in most of the musical works but I find reference to another such copyright society in the judgment dated 27th January, 2010 in CS(OS) 1216/2007 titled *The Indian Performing Right Society Ltd. and Another Vs. Punit Goenka and Another*, . I am therefore not inclined to

decree the suit of the plaintiff. However, the same shall not be considered as a licence/permission to the Defendants to violate the copyrights, if any, of the plaintiff and if the Defendants do so they shall continue to remain liable for the same.

10. Though as aforesaid no issues were framed in this suit but I may notice that the Defendants No. 2 and 3 have in their written statement controverted the territorial jurisdiction of this Court to entertain the suit. The plaintiff society has its registered office at Mumbai and has invoked the territorial jurisdiction of this Court contending that it has a branch office at Delhi and on the basis thereof invoked Section 62(2) of the Copyright Act. All the Defendants, as aforesaid, are based at Calcutta and the injunction claimed against them is also with respect to the violation/infringement of copyright of the plaintiff occurring at Calcutta. This Court has in a judgment in another suit filed by the plaintiff namely, The Indian Performing Right Society Limited v. Sanjay Dalia 143 (2007) DLT 617, on similar facts held that the courts at Delhi would have no jurisdiction. Appeal filed by the plaintiff against the said judgment has been dismissed by the Division Bench of this Court vide judgment reported in 155 (2008) DLT 164. This Court would for this reason also not have territorial jurisdiction to entertain the suit or to injunct the Defendants.

The suit therefore fails and is dismissed. However, no order as to costs.