
(2019) 08 CAL CK 0224

In the Calcutta High Court

Case No : General Application (GA) No. 1068 Of 2018, Civil Suits (CS) No. 23 Of 2018

Vodafone Idea Limited

APPELLANT

Vs

Saregama India Limited & Anr

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Copyright Act, 1957 — Section 13(1)(a), 14, 17, 18, 38, 38A, 38B
Constitution Of India, 1950 — Article 133(1)

Citation : (2019) 08 CAL CK 0224

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : S.N. Mookherjee, Soumabho Ghose, Arunabha Deb, Deepan Sarkar, Ashika Daga, Ayush Jain, Ranjan Bachawat, Debnath Ghosh, Adreeka Pandey, Avijit Dey, Anindya Kr. Mitra, Abhrajit Mitra, Soumya Roy Chowdhury, Sarosij Dasgupta, Deepshikha Sarkar, Ritesh Ganguly, Awani Kumar Roy, Surajit Biswas

Judgement

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Arindam Sinha, J

The Court : Mr. Mookherjee, learned senior advocate appearing on behalf of plaintiff resumes from where he left off on 13th August, 2019. He submits, in EIMPA (supra), view taken was prior to amendment in year 2012, to Copyright Act, 1957. An author of musical or literary work could have his right over it defeated by the person from whom the author worked in employment under a contract of service or apprenticeship, for that person to be first owner. This was by reason of provisos (b) and (c) in section 17. The judgment was carried to Supreme Court on an appeal by certificate granted under article 133(1) of the Constitution of India. A question was framed including in it, whether composer, lyricist is capable of assignment and whether the producer of a cinematograph film can defeat the same by engaging the same person. The question was answered in Indian Performing Right Society Ltd. vs. EIMPA reported in (1977) 2

SCC 820. He relies on paragraphs 8, 15 and 17 for law declared in answering the question. He then draws attention to the footnote by presiding learned Judge in the Bench, to paragraphs 22 and 24 and submits, that was inspiration for amendments to the Act, effected particularly in year 2012. He draws attention to inserted by amendment last proviso in question 17, which excludes application of clauses (b) and (c) provisos in the section from affecting right of authors in work referred to in clause (a) of sub-section (1) in section 13. He submits, meaning of copyright is given in section 14. Defendant no.2 contending cause of authors of musical and literary works incorporated in sound tracks, in respect of which his client has had Master Agreement and Annexes, have a bundle of rights as copyright in their works. Their assertion to claim royalty, as made here, would relate to sub-clause (iv) under clause (a) in section 14. Moving on he submits, section 18 provides for assignment of copyright. Assignment has taken place by said authors and thereby incorporation of their works to make cinematograph films, from which the sound recordings. He relies on third proviso in section 18, which is reproduced below:

"Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive that right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void."

He submits, defendant no.1 is assignee. His client is not. His client has paid and is ready and willing to further pay in terms of Master Agreement and Annexes, to defendant no.1. He draws attention to Deed of Assignment dated 22nd May, 2017 disclosed by defendant no.2 in its affidavit-in-opposition. Referring to recitals and clause (2) in the deed he points out, consideration for it was assignor being assured of admission to membership of assignee (defendant no.2). Subject matter of assignment would be of producers' rights in respect of cinematograph films prior to amendment in year 2012 and those rights in respect of such films, produced post amendment. Clause (4) of the deed says both assignor and assignee respectively recognized right of respective owner/publisher to receive 50%, right of composer to receive 25% and that of lyricist to receive 25% of royalties. This is recognition of and in terms of third proviso in section 18. He emphasizes that his client is not assignee of defendant no.2. Defendant no.1 is, as has dealt with the work under Master Agreement and Annexes, with his client.

Whatever has been paid to defendant no.1 and its further entitlement by way of royalty, must be shared on assignment by authors of works incorporated in the sound recordings.

He refers to Copyright (Amendment) Bill, 2010 to demonstrate that anguish expressed in the footnote given in IPRS versus EIMPA reported in (1977) 2 SCC 820, were sought to be addressed by the Bill and hence, inter alia, the amendments to the Copyright Act referred to by him and sections 38, 38A and 38B addressing concerns expressed about performer's rights.

He submits, his client did not obtain compulsory licence by virtue of interim order. His client has right under Master Agreement and Annexes. Tips Industries Ltd. (supra) and Music Choice India Pvt. Ltd. (supra), both relied upon by defendant no.2, are distinguishable on facts. In those cases licence for broadcast was necessary and in that context there was discussion regarding compulsory licence, whether can be granted. He submits, there has been no suppression by his client. Annexed agreement dated 16th June, 2016, disclosed in affidavit-in-opposition of defendant no.1, stood terminated by email dated 29th March, 2017. This email is disclosed in his client's affidavit-in-reply. Omission to refer to a terminated agreement cannot be said to be suppression.

He then draws attention to paragraph 25 of the application to submit, as on date of filing it Rs.2,38,01,596/- was due and payable by his client to defendant no.1 under the Master Agreement and Annexes. A schedule at page 137 of the application gives the break up. Direction for deposit, when made, was for Rs.3.5 crores. He submits, the interim order should be confirmed to run till disposal of the suit but regarding the monetary aspect, he would inform Court on adjourned date. Saving that he concludes his submissions.

List on 17th September, 2019.