

(2017) 03 DEL CK 0238

In the Delhi High Court

Case No : 4 of 2017

ZEE ENTERTAINMENT ENTERPRISES LTD

APPELLANT

Vs

SAREGAMA INDIA LTD

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

[Copyright Act, 1957](#), [Section 60](#) -
Remedy in the case of groundless threat of legal proceedings

Citation : (2017) 03 DEL CK 0238

Hon'ble Judges : Pradeep Nandrajog, Yogesh Khanna

Bench : DIVISION BENCH

Advocate : Sandeep Sethi, Sudeep Chatterjee, Jaya Mandelia, Kangan Roda, P.Chidambaram, Rajiv Nayar, Ajay Bhargava, Vanita Bhargava, Ankur Sangal, Sharngan

Judgement

1. The appellant obtained a license from the respondent commencement of rights whereunder was with effect from January 01, 2014. Agreed license fee in sum of Rs. 2.15 crores was paid. The license permitted appellant to use the repertoire of the respondent. The agreement was novated and the license fee was increased to Rs. 3.17 crores. Upon the expiry of the period of the license, the parties negotiated. Respondent demanded Rs. 3.5 crores per annum as license fee. As per the appellant it had acquired copyright including negative rights from the producers/rights holders in certain works essentially pertaining to cinematograph films and therefore the respondent could not include said works for purposes of computing the license fee.

2. On December 30, 2016, the respondent served a notice upon the appellant threatening to take action for infringing copyrighted works of the respondent without a license. On January 02, 2017 the appellant filed a suit for declaration and on the very first date when the suit was listed i.e. January 03, 2017, counsel for the respondent appeared and informed the Court that the appellant was using the repertoire of the respondent under a license in the past and could not continue to use the same without paying any license fee and that the respondent

would be filing a suit for injunction. Vide order dated January 03, 2017, a pro-tem ad-interim order was passed requiring appellant to pay Rs. 2 crores to the respondent as license fee and deposit Rs. 1.5 cores in this Court and subject thereto the appellant could continue its activities.

3. The respondent thereafter filed a suit for injunction to restrain the appellant from using it repertoire without obtaining a license.

4. Vide impugned order dated January 24, 2017, the learned Single Judge has held that in view of the suit filed by the respondent, the suit filed by the appellant had been rendered infructuous and had been disposed of with the view taken that appellant's claim of having acquired rights from the copyright owners directly would be decided in the suit filed by the respondent and the decision would bind the parties. Rs. 1.5 crores deposited in this Court have been directed to be released to the respondent upon an undertaking furnished by its Director supported by a resolution of the Board of the respondent to refund the amount together with such interest if at all a decree to said effect is passed.

5. Section 60 of the Copyright Act reads as under:- "60. Remedy in the case of groundless threat of legal proceedings -

Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in Section 34 of the Specific Relief Act, 1963 (47 of 1963), institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit - (a) obtain an injunction against the continuance of such threats; and (b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section does not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him."

6. From the facts noted hereinabove it is clear that the respondent has, with due diligence, commenced an action for infringement of the copyright claimed by it. It assumes importance to highlight that rather than to respond to the legal notice dated December 30, 2016 caused to be served by the respondent upon the appellant, it filed a suit for declaration on January 02, 2017 which was listed before a learned Single Judge of this Court on January 03, 2017. On the very first date the respondent informed the Court that it was in the process of drafting and filing a suit for injunction. Indeed, one was filed within 2 weeks thereof.

7. The juridical philosophy behind Section 60 of the Copyright Act is obvious. If a person issues a legal notice to a party alleging violation of a copyrightable work, the party to whom the notice is served would have to engage the services of a lawyer to respond to the notice, for the reason a non-traverse of the claim in the

notice would be held against the recipient of the notice. In this manner a party can be unnecessarily harassed. Therefore, if a party issuing a notice continues with the threat and as a result the sword of domiciles continues to hang over the head of the noticee, the noticee may seek a declaration. But where the person alleging violation commences prosecution with due diligence, of an action for infringement, the proviso to Section 60 would come into play. The argument of learned senior counsel for the appellant that the proviso envisages commencement of an action for infringement prior in point of time to the suit for declaration filed is noted and rejected keeping in view the facts of the instant case. Rather than to respond to the legal notice served by the respondent upon the appellant, within two days the appellant filed the suit for declaration. It is not a case where the alleged infringer believed that groundless threats of legal action are imparted to him for months together had waited at the mercy of the alleged owner of the copyrighted work.

8. Noting that inherent would be the affirmation of the right of the appellant if the suit filed by the respondent is dismissed, as has been rightly observed by the learned Single Judge, we dispose of the appeal affirming the impugned order taking on record the statement made by learned senior counsel for the respondent and binding the respondent to the same, that on receipt of Rs. 1.5 crores together with the accrued interest thereon, as directed by the impugned order, the respondent would invest the same in a fixed deposit and the receipt would be filed in the suit filed by the respondent as security.

9. No cost.