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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Reserved on : 06th December, 2024***
Judgment Pronounced on : 03rd March, 2025

+ CS(COMM) 714/2022 and I.A. 16777/2022 & I.A. 17272/2022

PHONOGRAPHIC PERFORMANCE LIMITEDPlaintiff

Through: Mr. Rajiv Nayar and Mr. Chander M. Lall, Senior Advocates with Mr. Ankur Sangal, Ms. Sucheta Roy, Mr. Raghu Vinayak Sinha, Mr. Shaurya Pandey and Ms. Ananya Mehan, Advocates.

versus

AZURE HOSPITALITY PRIVATE LIMITED & ORS.....Defendants

Through: Ms. Swathi Sukumar, Sr. Advocate with Mr. S. Santanam Swaminadhan, Mr. Kartik Malhotra, Mr. A. Mandal, Mr. Ritik Raghuvanshi and Mr. Rishubh Agarwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

I.A. 16777/2022 (Under Order XXXIX Rules 1 & 2, CPC) &

I.A. 17272/2022 (Under Order XXXIX Rule 4, CPC)

1. By way of this judgment, I shall dispose of I.A. 16777/2022 filed on behalf of the plaintiff for grant of interim relief under Order XXXIX Rules 1



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and 2 of the Code of Civil Procedure, 1908 (CPC) and I.A. 17272/2022 filed on behalf of the defendant no.1 under Order XXXIX Rule 4 of the CPC seeking vacation of the *ex-parte ad interim* injunction order passed by this Court on 14th October, 2022.

Case set up in the plaint

2. Brief facts as set out in the plaint are as follows:

2.1 The plaintiff, Phonographic Performance Limited, (PPL) is a company limited by guarantee, registered under the provisions of the Companies Act, 2013, which is engaged in the business of issuing licences for public performance of sound recordings on the basis of the assignments granted to it by its various member record labels. The plaintiff owns and/or controls the public performance rights of 400+ music labels, with more than 4 million international and domestic sound recordings.

2.2 The plaintiff has executed assignment deeds under Section 18 of the Copyright Act, 1957 (hereinafter “Copyright Act”) with its assignors in respect of the assignors’ sound recordings, wherein they have assigned the public performance rights of the sound recordings to the plaintiff. On account of the said assignments, the plaintiff has become the owner in sound recordings to the extent of public performance of the same and therefore, is exclusively entitled to grant licences for communication to the public/public performance of its repertoire of sound recordings.

2.3 The list of sound recordings in which the plaintiff has copyright is available on the plaintiff’s website ‘<https://www.pplindia.org/songs>’ (“plaintiff’s copyrighted works”), which provides express notice of the plaintiff’s rights in the sound recordings to any user.



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2.4 The plaintiff's website also provides a list of tariffs that are required to be paid by third parties for the utilization of the plaintiff's copyrighted works in their premises/events.

2.5 Between 7th May 1996 and 21st June 2014, the plaintiff company was a registered copyright society under Section 33 of the Copyright Act, and thereafter in 2014, due to the amendment brought in the Copyright Act, the plaintiff surrendered its registration as there was a statutory requirement for all the registered copyright societies to re-register themselves.

2.6 The defendant no.1 company is engaged in the business of running restaurants and bars in the casual dining sector. Some of the restaurants run by the defendant no.1 company include 'Mamagoto', 'Dhaba' and 'Sly Granny' which have several outlets throughout India including New Delhi and the defendants no.2 and 3 are the directors of the defendant no.1. The plaintiff has given the list of 86 restaurants run by the defendant no.1 along with their locations in paragraph 14 of the plaint.

2.7 The representatives of the plaintiff visited the restaurants being run by the defendants at two locations on 13th and 14th July, 2022 and found that the defendants were exploiting the sound recording of the plaintiff in the said premises without taking any license from the plaintiff.

2.8 Aggrieved by the same, the plaintiff sent a cease-and-desist notice to the defendants on 20th July, 2022. However, the defendants did not reply to the said notice.

2.9 Thereafter, representatives of the plaintiff visited another restaurant operated by the defendants on 12th October, 2022 and discovered that the



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defendants were still continuing their infringing activities even after the receipt of a cease-and-desist notice.

3. Hence, the present suit was filed by the plaintiff seeking a permanent injunction restraining the defendants from infringing the copyright of the plaintiff, and other ancillary reliefs.

Case set up in the written statement

4. The plaintiff has concealed that it had earlier preferred a commercial suit against the defendant no.1 before the High Court of Bombay for the same intellectual property that is the subject matter of the present suit, being suit no.29686 of 2021 (hereinafter 'Bombay Suit'), which was withdrawn by the plaintiff without any liberty to file a fresh suit. Therefore, the present suit is barred in terms of Order 23 Rule 1 (4) (b), CPC.

5. The plaintiff is not a registered copyright society and cannot carry out the business of issuing licenses in respect of sound recording works since as per Section 33 of the Copyright Act, only a registered copyright society is permitted to carry out the business of issuing such licenses and collect royalties for the same.

6. The plaintiff has surrendered its registration and the same has not been renewed by the plaintiff till date. The plaintiff is seeking re-registration as a copyright society and this is a material fact that should have been disclosed in the plaint. The plaint only gives the impression that the plaintiff has surrendered its registration on account of a change in law and is no longer functioning as a copyright society. The plaintiff has not filed the relevant correspondence with the relevant government authorities along with



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the plaintiff's application for re-registration as a copyright society under Section 33 of the Copyright Act.

Proceedings in the suit

7. The predecessor Bench vide order dated 14th August, 2022, granted an *ex-parte ad interim* order in favour of the plaintiff restraining the defendants from exploiting/using the plaintiff's copyright works in any of its outlets. Immediately thereafter, the defendants filed an application under Order XXXIX Rule 4 seeking vacation of stay being I.A. No.17272/2022.

8. The same Predecessor Bench *vide* order dated 20th October, 2022, suspended the *ex-parte ad interim* injunction order passed on 14th October, 2022 on the ground that the plaintiff did not disclose the filing of the Bombay Suit as well as the orders passed therein, which would amount to concealment.

Submissions on behalf of the Plaintiff

9. Mr. Rajiv Nayar and Mr. Chander M. Lall, learned senior counsel appearing on behalf of the plaintiff, have made the following submissions:-

I. The plaintiff is the owner of the copyright in various sound recordings as per Section 14 (e) (iii) of the Copyright Act, as the plaintiff has been assigned the 'right to communicate the work to the public' as per Section 18 (1) and (2) of the Copyright Act. Therefore, the plaintiff has the exclusive right to grant licenses for the same.

II. The defendants' act of communicating the plaintiff's sound recordings to the public without taking a license at their premises, which are being used for profit, shall amount to infringement of the plaintiff's copyright as per Section 51 of the Copyright Act.



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III. The plaintiff, being the owner of the copyright by way of assignment, can institute a suit for infringement against the defendants as provided for in Section 55 of the Copyright Act.

IV. The plaintiff has filed the present suit as an owner of copyright and not as a copyright society. As an owner, the plaintiff has the right to decide the rates of license and the defendant cannot question the same. The plaintiff has published the tariff rate applicable for restaurants/bars on the plaintiff's website.

V. A plain reading of Section 30 as well as the first proviso to Section 33 (1) of the Copyright Act clarifies that the plaintiff, as the owner of the copyright, is entitled to grant licenses for the same. The second proviso to Section 33(1) does not extend to the rights in sound recordings or cinematograph films. Reliance in this regard is placed on judgment of this Court in *Novex Communication v. Lemon Tree Hotels*,¹ as well as *Phonographic Performance Ltd. v. Canvas Communication*². Reliance is also placed on the judgment of the Bombay High Court in *Novex Communications v. Trade Wings Hotel*³,

VI. The Bombay Suit filed by the plaintiff was a part of a batch of 24 suits that was filed by the plaintiff against 900 defendants. In the Bombay Suit, there were 21 defendants out of which one of the outlets of the defendant was arrayed as a party. In the present suit, the defendant has been impleaded as a legal entity which runs around 86

¹ 2019 SCC OnLine Del 6568

² Order dated 17th December, 2021 in CS (Comm) 671/2021

³ 2024 SCC OnLine Bom 252



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outlets/restaurants. In any event, the present suit has been filed on a fresh cause of action and, therefore, the withdrawal of the aforesaid suit would not be relevant in the present suit.

Submissions on behalf of the Defendants

10. Ms. Swati Sukumar, learned senior counsel appearing on behalf of the Defendants, has made the following submissions:-

I. The *ex-parte ad interim* injunction order dated 14th October, 2022 passed in favour of the plaintiff was suspended *vide* order dated 20th October, 2022 due to the plaintiff's concealment of the previous suit before the Bombay High Court and thus, the plaintiff cannot seek any relief.

II. The plaintiff carries on '*the business of granting licenses*' as provided in Section 33 (1) of the Copyright Act as a collecting society and not as an 'owner' of sound recordings in its individual capacity. Therefore, the plaintiff is not entitled for protection under the first proviso to Section 33 of the Copyright Act.

III. The distinction sought to be drawn between PPL's actions as an "owner" versus a copyright society is completely illusory in light of Section 54 of the Copyright Act, 1957, and is wholly irrelevant.

IV. The present suit is an abuse of process by the plaintiff and amounts to undoing the amendments carried out by the Copyright (Amendment) Act, 2012. The interpretation placed by the plaintiff on Section 33 and its proviso would amount to rewriting the statute. A holistic reading of Section 33 along with its proviso indicates that the



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business of issuing licenses shall be conducted only through copyright societies that are duly registered under the Copyright Act.

V. The plaintiff's reliance on *Novex v. Lemon Tree* (supra) is misplaced as the said decision was passed when there was no registered copyright society for sound recordings. Further, the judgment in *Phonographic Performance v. Canvas* (supra) was passed relying upon the aforesaid judgment in *Novex v. Lemon Tree* (supra).

VI. The interpretation provided by the Bombay High Court in *Novex Communications v. Trade Wings Hotel* (supra), of the second proviso of Section 33(1) to the extent that the second proviso is confined to authors of underlying works is erroneous.

VII. The defendants placed reliance on the judgment of the Madras High Court in *Novex Communications v. DXC Technology*,⁴ wherein it has been correctly held that Section 33 clamps a prohibition on conducting the business of issuing licenses except through copyright societies registered under the Copyright Act.

VIII. The defendants also place reliance on the judgment in *Leopold Café v. Novex Communications*,⁵ wherein the Bombay High Court restrained Novex from carrying on the business of issuing licenses and collecting license fees in respect of copyrighted work, relying upon Section 33 of the Copyright Act.

IX. Even if the plaintiff is assumed to be the owner of the copyright in the sound recordings, no interim injunction can be granted as there is

⁴ 2021 SCC OnLine Mad 6266

⁵ 2014 SCC OnLine Bom 4801



no 'irreparable injury' shall be caused since the plaintiff can be compensated in monetary terms.

Analysis and findings

11. I have heard the rival submissions and perused the material on record.

Effect of withdrawal of the Bombay suit

12. To begin with, I would deal with the contention of the defendant that the present suit is barred on account of the plaintiff having filed a commercial suit against defendant no.1 before the Bombay High Court in respect of an identical cause of action. The filing of the said suit was concealed in the present suit. The plaintiff's response to the aforesaid contention is that the Bombay Suit was based on a different cause of action.

13. To appreciate this controversy, a reference may be made to the plaint of the Bombay Suit. The relevant paragraph of the plaint dealing with 'cause of action' is set out below:-

“The cause of action arose for filing this suit arose on 22nd November 2021 when the Defendants, despite being called upon to do so, failed and neglected to respond to the Notice dated November 22, 2021 and apply for the necessary license. The Defendant has not answered or replied to the aforesaid letters/Notices. The cause of action has also arisen when the Defendant publicized/advertised its event for the Festive season. The present Suit is being filed as a quia timet action to prevent the unauthorized use of the Plaintiff's repertoire.”

[emphasis supplied]

14. A perusal of the legal notice dated 22nd November, 2021 (page no.288 of the plaintiff's documents) discloses that the intent behind the notice was that owners of restaurants interested in playing the sound recordings of the



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plaintiff during special events organised during the festive season of the year 2021-2022, such as Christmas and New Year's Eve parties, should obtain a one-time license for that particular event/show. Accordingly, the said restaurant owners were called upon to take the requisite license from the plaintiff, failing which the plaintiff would initiate legal proceedings against them.

15. Since the defendants failed to respond to the plaintiff's legal notice, nor did they take a license from the plaintiff, the plaintiff filed a batch of 24 suits before the High Court of Bombay against 900 defendants. One of the said suits was Suit no.29686 of 2021 (Bombay Suit) which had 21 bars and restaurants as defendants, including one outlet of the defendant no.1, i.e. 'Mamagoto' located at Khan Market, Delhi. The prayers sought in the Bombay suit were limited to the relief of injunction, destruction and costs along with interim relief. However, no damages were claimed in the said suit.

16. In contrast, the present suit has been filed against the defendant as a separate legal entity, running around 86 restaurants and bars. Besides the relief of permanent injunction, the plaintiff has also claimed damages in the present suit. In this regard, it may be relevant to refer to the paragraph in the plaint in the present suit dealing with 'cause of action'. The said paragraph is set out below:

“That the cause of action for filing the present suit arose on 13 and 14 July 2022 when the Plaintiff's representatives visited the premises of a restaurant being run by the Defendants in New Delhi, namely 'Mamagoto' and 'Dhaba', where the Defendants were exploiting the sound recordings of the Plaintiff without any license. The cause of action further arose when the Plaintiff



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addressed a Legal Notice dated 20 July 2022 to the Defendants and they chose not to reply to the same. The cause of action further arose on 12 October 2022 when representatives of the Plaintiff visited another of the premises of the Defendants namely 'DHABA' and found that the Defendants continued to exploit its sound recordings. It is submitted that each and every use of the Plaintiff's copyrighted works by the Defendants would give rise to a fresh cause of action. The cause of action is a continuous one and shall continue till the Defendants are not restrained by the orders of this Hon'ble Court."

17. The cause of action for filing the present suit is based on the visits conducted by the plaintiff's representatives to the restaurants of the defendants on 13th and 14th July, 2022, where it was found that the defendants were exploiting the sound recordings of the plaintiff without a license. The cause of action is further based on the legal notice dated 20th July, 2022 sent by the plaintiff to the defendant no.1 calling upon the defendant no.1 to refrain from exploiting the plaintiff's copyrighted works. The cause of action was also based on another visit by the plaintiff's representative to another restaurant of the defendant on 12th October, 2022.

18. In light of the facts narrated above, in my considered view, the cause of action of filing the present suit is separate from the cause of action which led to the filing of the Bombay Suit. The Bombay Suit was in the nature of a *quia timet* action premised on an impending infringement by the defendants therein on account of events to be organised by them for the festive season in December 2021 and January 2022. On the other hand, the present suit has been filed on the basis of actual infringement of the plaintiff's copyrighted works carried out by the defendants. The cause of action in the present suit is not confined to a specific event or a specific period of time but is an



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ongoing cause of action as the defendants continue to infringe the plaintiff's copyrighted works.

19. The provision of Order XXIII Rule 1 contains a bar against the plaintiff for initiating a fresh suit on the same cause of action. There is no bar to file a suit based on a separate cause of action. Therefore, in my considered view, there is no bar on the plaintiff to file the present suit.

20. Along with the Bombay Suit, the plaintiff filed an application for interim injunction seeking to restrain the defendants from communicating the plaintiff's copyrighted works to the public without obtaining a license from the plaintiff. However, the court did not grant such an interim injunction in favour of the plaintiff and only passed interim directions directing the defendants to maintain and preserve the audio recordings of the events organised by the defendants during the period 24th December, 2021 to 5th January, 2022.

21. After 5th January, 2022 the relief sought in the suit became infructuous and hence, the plaintiff filed an application to withdraw the suits with liberty to file afresh. Hence, the aforesaid suit, along with 23 other suits were withdrawn by the plaintiff on 4th July, 2022.

22. A perusal of the order passed by the Bombay High Court permitting withdrawal of the suits filed by the plaintiff makes it clear that the same was a simpliciter withdrawal order without making any observations on the merits of the case and, therefore, the same would have no bearing on the adjudication of the present suit.

23. In view of my finding that the Bombay Suit was based on a separate cause of action and taking into account that the Bombay Suit had already



been withdrawn by the plaintiff, in my view, the failure to disclose the Bombay Suit was not a material suppression or concealment on behalf of the plaintiff.

Merits of the case

24. To begin with, I would proceed to examine the legal position relevant for the adjudication of the present case.

25. The issues raised in the present suit *vis-à-vis* the rights of an assignee in respect of sound recordings came up before a coordinate Bench of this Court in ***Novex Communication v. Lemon Tree*** (supra). In the aforesaid case, the trial court had held that the appellant/plaintiff cannot sue for infringement of copyright, even though it is the assignee/owner of the sound recordings by way of assignment. In terms of Section 33 (1) of the Copyright Act, only a registered copyright society is permitted to legally license the copyrighted works of sound recordings.

26. After a complete analysis of the provisions of the Copyright Act, the coordinate bench, *vide* judgment dated 11th January 2019, held as under:-

- i. The first proviso to Section 33 (1) of the Copyright Act makes it clear that an owner of copyright, in his individual capacity, will continue to have the right to grant licenses in respect of his own works.
- ii. However, the license can only be granted by the owner in a manner consistent with his obligation as a member of the registered copyright society, i.e. the owner cannot grant a license in respect of a right which has been granted by the owner to the copyright society.
- iii. The second proviso to Section 33 (1) provides that with respect



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to a literary work, dramatic work, musical work or artistic work, as embedded in cinematographic work or sound recording, the business of issuing or granting of license would vest only with a copyright society. Thus, it is recognized that while there would be copyright existing in the cinematographic film and sound recording, it will also contain independent copyright in respect of literary, dramatic, musical or artistic work contained therein.

iv. The second proviso to Section 33 (1) deals with granting of licenses with respect to musical and artistic work in sound recordings and not the sound recording itself. Therefore, the second proviso to Section 33 (1) does not contain a bar insofar as the sound recordings are concerned.

v. Section 34 recognizes the right of the owner of a copyright to assign the right to give out licenses to a copyright society as well as continue to retain their right to give such licenses.

vi. Under Section 55 of the Copyright Act, only an owner of copyright can institute a suit or legal proceedings in respect to the infringement of a copyright. There is no provision in the Copyright Act which entitles a copyright society to sue for infringement of copyright. Whether a copyright society exists or not, the owner has an independent right to sue for infringement of copyright.

27. The aforesaid observations in *Novex v. Lemon Tree* (supra) were followed by another coordinate Bench of this Court in *Phonographic Performance v. Canvas* (supra). The relevant observations in paragraph 18 of the said judgment is set out below:-



“18. Clearly, the coordinate Bench of this Court has interpreted the provisions of Section 33 to hold that the owner of a copyright does not cede, at any time, the right to issue licenses in respect of the copyright, unless the owner grants exclusive right in that regard to a copyright society. Else, the coordinate Bench has expressed the view that the right of the owner would subsist. Following thereupon, the coordinate Bench has interpreted the second proviso to Section 33(1), by noting that there is an independent copyright in a sound recording, distinct from the copyright in a cinematographic work or other work in which the sound recording may be included. That independent right, according to the coordinate Bench, from the afore-extracted paragraphs, subsists, unless and until the owner of copyright exclusively authorises a copyright society to issue such licenses.”

28. Based on the aforesaid findings, an *ad interim* injunction order was passed in favour of the plaintiff restraining the defendant from exploiting the sound recordings in which the plaintiff held copyright. The said order is still continuing.

29. The defendant has sought to distinguish the judgment in *Novex v. Lemon Tree* (supra) on the ground that the said decision was passed when there was no registered copyright society for sound recordings. It is submitted that the reasoning of the aforesaid judgment would not operate when a duly constituted copyright society, namely, Recorded Music Performance Limited, has already been registered by the Central Government. I am unimpressed with this submission. The judgment in *Novex v. Lemon Tree* (supra) is not premised on whether a registered copyright society exists or not. The judgment clearly holds that an owner of copyright, in his individual capacity, will continue to have the right to grant



licenses in respect of his own works, even after the owner has assigned the rights to give out licenses to a copyright society.

30. The issues raised in the present suit also came up for consideration before the Bombay High Court in a Civil Suit filed by Novex Communications and PPL (plaintiff herein) seeking perpetual injunction restraining the defendants therein, who were also running bars and restaurants, from communicating the sound recording of the songs assigned in favour of PPL and Novex without a license from them. The defence taken by the defendants therein was that Novex and PPL cannot carry on the business of the issuing of licenses without being registered as a copyright society under Section 33(1) of the Copyright Act, which is similar to the defence taken by the defendants herein.

31. The Bombay High Court in its judgment in *Novex v. Trade Wings* (supra) has held as under:-

- i. There is a partial assignment of the copyright in favour of PPL and Novex, in terms of the agreements executed in their favour by music labels. The assignment was to the extent of communicating the sound recordings to the public.
- ii. In terms of Section 18(2) of the Copyright Act, PPL and Novex become the owners of the copyright of the sound recording in the work assigned in their favour.
- iii. Section 30 of the Copyright Act gives the right to the owner, or the assignee, which has become the owner by virtue of the assignment, to grant licenses in respect of the copyrighted works. Therefore, PPL and Novex, as owners/assignees, have the power to



grant interest in the copyright by granting a license which would include the right to communicate the sound recordings to the public.

iv. A copyright society can act as an authorized agent of the owners or as an assignee. It administers the rights of the owners by operating as an agent in accordance with Section 34 of the Copyright Act.

v. The object behind the 1994 amendment was to protect and facilitate the exercise of the owners' rights and not to restrict or diminish them in any manner.

vi. Sections 34 and 35 of the Copyright Act draw a clear distinction between the rights of the owner/author on one hand and the rights of the administrator/agent (copyright society) on the other hand.

vii. The decision of the Supreme Court in *Entertainment Network India v. Super Cassette Industries*⁶ makes it clear that the 1994 amendment does not take away the rights of authors/owners. It only gives the owners a choice to either exploit their copyright by themselves or through a copyright society. The copyright society does not take away any rights of an owner.

viii. Section 33 (1) of the Copyright Act does not curtail the power of the owner to grant any interest in the copyright by license under Section 30 of the Copyright Act.

ix. Section 30 and Section 33 of the Copyright Act operate in separate chapters of the Copyright Act. Section 30 is a part of Chapter VI, which provides for granting of licenses by owners of the

⁶ (2008) 13 SCC 30



copyright, whereas Section 33 is in Chapter VII of the Copyright Act, which deals with copyright societies. Therefore, Section 33 cannot take away the rights granted in favour of an owner under Section 30.

x. The Second Proviso is confined to authors of underlying works which requires protection and is thus inapplicable to sound recordings.

xi. Merely because PPL was a registered copyright society earlier would make no difference. PPL is granting licenses as an owner in terms of Section 30 of the Copyright Act. PPL and Novex, as owners of the copyright in respect of their works, have the right to injunct the defendants from infringing their works.

32. Counsel for the defendants has relied upon the judgment of a Single Bench of the Madras High Court in *Novex Communications v. DXC Technology* (supra). In the aforesaid judgment, relying on the expression “*business of issuing or granting license*” and the word “*only*” occurring in second proviso to Section 33, it was held that a copyright owner, in his individual capacity, is free to exploit his right by issuing a license, however, the “*business of issuing or granting licenses*” can only be done by a copyright society.

33. The Bombay High Court, in its judgment in *Novex v. Trade Wings* (supra) has differed with the aforesaid view taken by the Madras High Court by stating as under:-

i. Madras High Court has overlooked the provisions of Section 30 of the Copyright Act in terms of which the owner has a right to grant a license in its copyrighted works.

ii. In the second proviso to Section 33 (1) of the Copyright Act,



the right to communicate sound recordings to the public is not covered and it only covers the underlying works.

iii. The business of granting licenses cannot be excluded from Section 30 of the Copyright Act when such licenses are granted by the owner of the copyright. If this was not the case, the owners would not be able to exploit their own works for commercial purposes.

34. I have carefully examined the judgments passed by the Bombay High Court and the Madras High Court. I would respectfully beg to differ with the findings of the Madras High Court, while concurring with the findings of the Bombay High Court for the reasons set out hereinafter.

35. As per the scheme of the Copyright Act, Section 18 gives a copyright owner the right to assign the copyright and upon such assignment, the assignee shall be deemed to be the owner of the copyright in the same manner as the owner. Section 30 of the Copyright Act gives the right to an owner, which would also include an assignee, to grant a licence in his works either by himself or through an agent.

36. Section 33 of the Copyright Act comes into play only where owners, who are members of a copyright society, have assigned the right to give licenses to a copyright society. The expression “*no person or association of persons*” occurring in Section 33(1) of the Copyright Act would not include ‘owners’, who are not members of a copyright society. Even in respect of owners, who are members of a copyright society, the position is clarified by the first proviso to Section 33 (1) that such an owner shall be free to grant licenses in respect of his own works in his individual capacity. The only limitation on such an owner is that the licenses granted by him would have



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to be consistent with his obligations as a member of a registered copyright society i.e., an owner cannot grant a license in his individual capacity, in respect of a work, which he has already exclusively licensed to a copyright society.

37. The right of giving a license in his works is an inherent right of a copyright owner under Section 30 of the Copyright Act. This right would necessarily include the '*business of issuing or granting licence*', the expression which occurs in Section 33 (1) and the second proviso thereto. Therefore, the second proviso to Section 33 (1) cannot put any fetters on the inherent right of a copyright owner to grant licenses in respect of his works or engage in the '*business of issuing or granting licence*'.

38. Further, the second proviso to Section 33 (1) makes it clear that the '*business of issuing or granting of licenses*' would vest with a copyright society, only with respect to a 'literary work', 'dramatic work', 'musical work' or 'artistic work', as embedded in a 'cinematographic work' or a 'sound recording' and not in the 'cinematographic work' or 'sound recording' itself.

39. Therefore, in my considered view, Section 33 cannot override the provisions of Section 30 of the Copyright Act which gives an absolute right to an owner of the copyright to grant any interest in the copyrighted work by way of a license.

40. The role of a copyright society as envisaged under the provisions of the Copyright Act is only for the purposes of collection of fees/royalties as an agent of the copyright owners.

41. Section 34 recognises the right of the owner of a copyright to assign



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the right to give out licenses to a copyright society as well as continue to retain their right to give such licenses. In terms of Section 34 of the Copyright Act, a copyright society “*may accept*”, from the owners of the copyright, an exclusive authorization to administer any right in the copyrighted work by issuance of licenses or collection of license fees or both. Axiomatically, a copyright society has a right not to accept such authorization from the owner. Similarly, in terms of Section 34 (b), the owners have the right to withdraw such authorization. It could not have been the intention of the legislature that if an owner retains the right to license or once an owner withdraws the authorization from a copyright society, then that work cannot be licensed by the owner himself.

42. Section 35 of the Copyright Act clarifies that a copyright society shall be subject to the collective control of the owners. Its function is to protect the interest of the copyright owners. Its rights can never supersede the rights of the owners. If the argument of the defendants is accepted, a copyright society, which is nothing but an agent of the owner, would have rights superior to that of the owner.

43. Counsel for the defendants has placed reliance on Section 54 of the Copyright Act to contend that even a copyright society can become an owner if it is granted an exclusive license by the sound recording companies, who are the first owners of copyright in the sound recordings. Therefore, the distinction drawn between PPL as an owner versus a duly constituted copyright society is totally illusory.

44. In terms of section 54, ‘*owners of copyright*’ shall include an exclusive licensee. This would give an additional right in favour of PPL



and/or Novex where an exclusive license has been granted in their favour. However, this would not prejudice their rights as an owner.

45. Yet another contention of the defendant is that the plaintiff has surrendered its registration and is seeking re-registration as a copyright society, which is a material fact that should have been disclosed in the plaint. I cannot agree. Since the plaintiff is not asserting rights in the present suit as a copyright society, the fact that the plaintiff is no longer a registered copyright society or the fact that it is seeking re-registration as a copyright society is not relevant for the adjudication of the present suit.

46. The defendants have also placed reliance on the judgment of the Bombay High Court in *Leopold v. Novex* (supra), wherein the Bombay High Court restrained Novex from carrying on the business of issuing and granting licenses and collecting license fees in respect of copyright works. The Court relied upon Section 33 of the Copyright Act to hold that an agent, who does not disclose its agency, cannot carry out the business of granting licenses in terms of Section 33 of the Copyright Act.

47. This judgment cannot come to the aid of the defendants as in the said case, Novex was acting as an agent issuing licenses in its own name. In the present case, the plaintiff is not acting as an agent but as an owner/assignee.

48. The defendants have also relied on the judgment of the Supreme Court in *Entertainment Network v. Super Cassette Industries*, (supra) in support of their submission that the Copyright Act seeks to maintain a balance between interest of the owner of the copyright in protecting its works and the interest of the public who have access to the owner's works.

49. It has correctly been pointed out on behalf of the plaintiff that the



aforesaid judgment was in relation to issuance of compulsory licenses in respect of radio broadcasting under Section 31(1)(b). The present case does not relate to compulsory licenses. In the very same judgement, the Supreme Court has observed that the concept of copyright societies was incorporated in the Copyright Act so as to enable an author to commercially exploit his intellectual property by a widespread dispersal in a regulated manner. It does not take away any of the rights of the author/owner.

50. Now, I proceed to apply the aforesaid legal position to the facts of this case.

51. The plaintiff claims to be the owner of copyright in respect of the public performance rights for various sound recordings on the basis of assignments in its favour by various music companies. Samples of the aforesaid deeds of assignment in favour of the plaintiff have been filed along with the documents filed with the plaintiff. (Page 22-51 of the plaintiff's documents)

52. In terms of the aforesaid assignments, the 'public performance rights' of the 'sound recordings' have been assigned in favour of the plaintiff and therefore, in terms of Section 18 of the Copyright Act, the plaintiff has become the owner of the aforesaid sound recordings, the details of which are available on the plaintiff's website. On a *prima facie* view, the plaintiff has established itself as the copyright owner of the 'sound recordings' on the basis of assignment deeds in its favour.

53. The fact that the defendants are playing the copyrighted sound recordings of the plaintiff has also not been denied by the defendants. The defendants have also failed to respond to the legal notice issued by the



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plaintiff to the defendants on 20th July, 2022. In fact, in its reply to the application for interim injunction, the defendant no.1 has admitted that out of the 86 restaurants listed by the plaintiff, 25 of them play music at their premises. There is no specific assertion that they are not playing the plaintiff's copyrighted works. It cannot be denied that the playing of the aforesaid sound recordings in various restaurants of the defendants would enhance the experience of the customers and result in a higher consumer footfall.

54. The plaintiff has also published the tariffs on its website, which are applicable to various restaurants/bars across the board. Therefore, it cannot be the case that the defendants have been charged a higher rate in respect of their establishments.

55. In light of the aforesaid legal position, the act of the defendants of playing the sound recordings in their restaurants/bars, for which the plaintiff holds the copyright would, on a *prima facie* view, amount to infringement of the plaintiff's copyright in terms of Section 51 of the Copyrights Act.

56. Balance of convenience is also in favour of the plaintiff and against the defendants. Even if the defendants are restrained from playing the sound recordings of the plaintiff in their restaurants, it would not result in closure or interruption of the core business of the defendants of serving food/drinks. On the other hand, irreparable injury would be caused to the plaintiff if the defendants continue to play the sound recordings of the plaintiff's copyrighted works without obtaining any license from the plaintiff.

57. Accordingly, the defendants, its directors, partners or proprietors, licensees, assigns, officers, servants, agents, representatives, contractors,



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sister concerns and any other person working for and on behalf of the defendants from doing any act including exploitation/use of the plaintiff's copyrighted works in any of its outlets till the final adjudication of the suit.

58. In view of the aforesaid, I.A. 16777/2022 filed on behalf of the plaintiff is allowed and I.A. 17272/2022 filed on behalf of the defendant no.1 is dismissed.

59. Needless to state, any observations made herein are only for the purpose of adjudication of the present applications and would have no bearing on the final outcome of the suit.

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60. List along with pending applications on 15th July, 2025.

AMIT BANSAL, J

MARCH 03, 2025

Vivek/-