

Phonographic Performance Limited Vs. Tv Today Network Limited and Anr.

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Court : Kolkata

Decided On : Jul-24-2017

Judge : Soumen Sen

Appellant : Phonographic Performance Limited

Respondent : Tv Today Network Limited and Anr.

Judgement :

GA No.2514 of 2015 CS No.135 of 2013 IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction ORIGINAL SIDE PHONOGRAPHIC
PERFORMANCE LIMITED -Versus TV TODAY NETWORK LIMITED & ANR.

Appearance: Mr.Abhrajit Mitra, Sr.Adv.Mr.Sarvapriyo Mukherjee, Adv.Mr.Satadeep
Bhattacharyya, Adv.Mr.Sarajit Biswas, Adv...for the petitioner.

Mr.Rudraman Bhattacharyya, Adv.Mr.Kanakendu Chatterjee, Adv.Ms.Moumita
Sarkar, Adv.Mr.S.K.Bajoria, Adv...for the respondent.

BEFORE: The Hon'ble JUSTICE SOUMEN SEN Date : 24th July, 2017.

The Court : The plaintiff is a copyright society.

The plaintiff from time to time has issued licence to the defendant no.1 to exploit
the sound recordings of which the plaintiff is the assignee from the respective
owners of such musical works.

The plaintiff has disclosed documents showing assignment.

The deeds of no.1 assignment are all on record.

The defendant was broadcasting such musical work under a licence agreement issued in its favour and renewed from time to time.

ultimately expired on 4th July, 2010.

All such licences The dispute arose with regard to the exploitation of such rights by the defendant no.1 beyond the licence period.

The defendant no.1 has relied upon Clause 5.4 of one of such licence agreement and submits that the rights mentioned therein are not final and were to be governed by the final orders that may be passed in the pending proceedings.

The defendant has relied upon an order passed by the Copyright Board on 25th August, 2010 in relation to complaints lodged by some of the licensee similarly placed.

plaintiff was also a party.

In the said proceeding the However, by the time the order was passed the licence period had expired.

Since there was no adjudication of any of such rates during the licence period, the plaintiff prima facie would be entitled to the licence fee as stipulated in clause 5.2.4 of one of such agreements.

agreements.

defendant There no.1 Similar cannot does not be clauses any possess doubt any are there that as in on compulsory other date the licence to broadcast and/or air any of the songs of which the plaintiff is the assignee.

The Court permitted the defendant no.1 to broadcast such songs upon furnishing a security of Rs.50 lakhs for the radio stations at Mumbai and Delhi.

Undoubtedly by passage of time large sums of money would be payable.

The argument to resist such claim appears to be the rates fixed by the Copyright Board in its order dated 25th August, 2010.

The Copyright Board has laid down the following directions with regard to revenue sharing: (a) 2% of net advertisement earnings of each FM radio station accruing from the radio business only for that radio station shall be set apart by each complainant for pro rata distribution of compensation to all music providers including the respondent herein in proportion to the music provided by the respective music providers and broadcast by the complainant.

Complainant shall be deemed to be a music provider for the music provided by it or received by it free of cost and broadcast.

For arriving and at net advertisement earnings, all Government municipal taxes paid, if any, and commission paid towards the procurement of such advertisements to the extent of 15% of such advertisement earnings shall be excluded; (b) Complaints licence by the shall Registrar furnish of within Copyrights a week a bank of grant guarantee of for Rs.10,000 in favour of the respondent for each radio station.

However, the sum of such bank guarantee shall be revised within two weeks after the close of every quarter of the year to such sum for which complainant was liable for payment of compensation for that quarter.

Quarter of a year means a period of three months ending on the last day of March, June, September and December of the relevant year; (c) If the complainant fails to revise the bank guarantee in terms of clause (b).respondent shall be at liberty to cancel the licence without giving any notice and recover the remaining dues from the available bank guarantee; (d) Payment of condensation by the respondent for a month shall be made by 7 complainant th following the month to which payment relates.

to the day of the month Complainant shall also furnish along with the payment the date wise details of the periods for which the music relating to the respondent and

all other music providers has been used for the month.

However, payment for the period beginning with the grant of licence and ending on 30th September, 2010 shall be made in lump sum by 7th October, 2010; (e) For any delayed payment for a month beyond 7th of the following month, interest at the rate of 1% per month or a part of month shall be payable; (f) In case payment is not made by the complainant for a radio station for consecutive two months, respondent herein shall be entitled to cancel the licence by giving notice of one month and recover the remaining dues from the bank guarantee; (g) A complainant may for one or more radio stations, by giving notice of one month and after making payment of all sums due, cancel the licence; (h) The validity of the licence granted Copyright shall come to end on 30 th by the Registrar of September, 2020. The defendant has failed to demonstrate that even if the said rates are adhered to for the said two stations Rs.50 lakhs is adequate.

The defendant no.1 is in possession of all record and all details relating to the exploitation of the musical works are within the special knowledge of the respondent no.1.

The defendant no.1 has not disclosed such details.

However, it is contended that an application for compulsory licence is pending before the Copyright Board.

So long the said application is not decided in favour of the defendant no.1 and rates are suitably altered, the defendant no.1 cannot use or exploit any of the musical works in any manner whatsoever without paying the licence fee.

Since all the agreements had expired, the question of making payment of any licence fees would not arise.

However, since the defendant no.1 was given the right to exploit such songs, upon payment of Rs.50 lakhs, beyond July, 2010 and a considerable time has passed when a sum of rs.50 lakhs was paid, the defendant no.1, upon furnishing a further sum of Rs.75 lakhs, by way of cash security or demand draft or bankers Registrar, High cheque Court, or bank Original guarantee Side, shall in favour be of

permitted the to broadcast the songs in respect of which the petitioner has claimed licence fees.

within a The defendant no.1 shall furnish such security period of three weeks from date; failing which the interim order of injunction passed earlier in terms of prayer (a) of the notice confirmed.

of motion in G.A.No.2514 of 2015 shall stand The Registrar, Original Side shall in case of such security shall deposit the said amount in a suitable fixed deposit account yielding highest return and shall keep the fixed deposit renewed till the disposal of the suit.

is furnished as security, the Similarly, if demand draft Registrar, Original Side, shall forthwith encash the demand draft and deposit the proceeds thereof in a suitable fixed deposit account yielding highest return and keep the fixed deposit renewed till the disposal of the suit.

Needless to mention, that the above payment is subject to the outcome of the proceedings pending between the parties before the Copyright Board and the authorities concerned influenced by any observations made in this order.

shall not be G.A.No.2514 of 2015, accordingly, stands disposed of.

Leave is given to Mr.S.K.Bajoria, Advocate to enter appearance in the suit on behalf of the defendant no.1.

The defendant no.1 shall file written statement within one week from date.

There shall be an order for cross-discovery of documents which shall be completed within three thereafter and inspection forthwith.

(SOUMEN SEN, J.) A/s.

weeks

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