

M/s Chancery Pavilion Vs. M/s Indian Performing Rights

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Court : Karnataka

Decided On : Sep-27-2023

Judge : V Srishananda

Appeal No. : RFA 145/2015

Appellant : M/s Chancery Pavilion

Respondent : M/s Indian Performing Rights

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE27H DAY OF SEPTEMBER, 2023 BEFORE THE HON'BLE MR. JUSTICE V. SRISHANANDA REGULAR FIRST APPEAL No.145/2015 BETWEEN M/S CHANCERY PAVILION THROUGH ITS OWNER: M/S ELIXIR ENTERPRISES HOTELS(P) LTD., A COMPANY REGISTERED UNDER COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT:NO.135, RESIDENCY ROAD, BANGALORE-560025. REPRESENTED BY ITS : B.PRADEEP MENON AGED ABOUT46YEARS, S/O.LATE.N.BHASKARAN, CORPORATE MANAGER. ...APPELLANT (BY SRI SATYANAND B S, ADVOCATE) AND1. M/S INDIAN PERFORMING RIGHTS SOCIETY LTD. A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT: NO.208, GOLDEN CHAMBERS, 2ND FLOOR, NEW ANDHERI LING ROAD, ANDHERI (W), MUMBAI-400053, REPRESENTED BY ITS: MANAGING DIRECTOR. 2 2 . M/S INDIAN PERFORMING RIGHTS SOCIETY LTD HAVING ITS

ADMINISTRATIVE OFFICE (SOUTH) AT:NO.109, PARSN PARADISE RESIDENTIAL APARTMENTS, D-1, B-BLOCK, 2ND FLOOR, G.N.ROAD, T.NAGAR, CHENNAI-600017, REPRESENTED BY ITS :LICENSING EXECUTIVE. 3 . M/S. INDIAN PERFORMING RIGHTS SOCIETY LTD. HAVING ITS BRANCH OFFICE AT: NO.257, B IIT BUILDING, 9TH A MAIN, 3RD BLOCK, JAYANAGAR, BANGALORE-560011, REPRESENTED BY ITS: AREA MANAGER LICENCING EVENTS MR. K.T.RAJANNA. ...RESPONDENTS (BY SRI DHYAN CHINNAPPA, SENIOR COUNSEL ALONG WITH SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE FOR R1 TO R3; THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION96R/W

ORDER

41RULE1OF CPC, AGAINST THE JUDGEMENT & DECREE DTD512.2014 PASSED ON IA NO.4 IN O.S.No.617/2013 ON THE FILE OF XVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, ALLOWING IA NO.4 FILED U/S60OF COPYRIGHT ACT1957R/W

ORDER

VII RULE11d) OF CPC FOR REJECTING THE SUIT. THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR

JUDGMENT

ON2208.2023, COMING ON FOR 'PRONOUNCEMENT OF

JUDGMENT

' THIS DAY, THE COURT DELIVERED THE FOLLOWING:- 3

JUDGMENT

The present Appeal is directed against the Order dated 05.12.2014 passed by the XVIII Additional City Civil Judge, Bengaluru, CCH-10, in O.S.No.617/2013 on I.A.No.4 filed by defendants under Section 60 of Copyright Act, 1957 r/w Order VII Rule 11(d) of the Code of Civil Procedure, whereby the plaint came to be rejected by allowing the application.

2. For the sake of convenience, parties are referred to as plaintiffs and defendants as per their original ranking before the Trial Court.

3. Shorn of unnecessary details, facts in brief for disposal of the present appeal are as under: Plaintiff filed the suit before the Trial Court under Section 60 of the Copyright Act r/w Section 26 further r/w Order VII Rule 1 of the Code of Civil Procedure, with the following prayer:

4. WHEREFORE, the plaintiff named above prays that this Honble Court be pleased to pass a judgment and decree in favour of the plaintiff and against the defendants jointly and severally as under: (i) DECLARE that the infringement of the copyrights as alleged and illegally threatened by the defendants in the letters dated 30.11.2012, 19.12.2012 and 26.12.2012 and further the legal notices dated 30.12.2012 and 31.12.2012 are not an infringement of any of the alleged rights of the defendants and merely threatening in nature; (ii) FURTHER DECLARE that the plaintiff company has not committed any infringement of any copyright, much less, an infringement as alleged and illegally threatened by the defendants; (iii) CONSEQUENTLY RESTRAIN the defendants or their assigns, subordinates, agents or any other persons claiming any sort of right, title and interest under them or through them by way of permanent injunction, from continuing to cause illegal threats of the nature as threatened by them in their notices and legal notices dated 30.12.2012 and 31.12.2012 and further restrain them from interfering with the peaceful carrying on of the business by the plaintiff and causing damage and loss of reputation in the business circle of the plaintiff Company; and (iv) Award costs of this suit to the plaintiff through out.

4. The claim of the plaintiff is based on the following factual aspects. Plaintiff contended that it is a registered Company carrying on the business of hotel, restaurant, cafe, tavern, beer house, refreshment, room and lodging, house keeping etc., Plaintiff contended that defendant No.1 is also a Company incorporated under the Companies Act, 1956 having its registered office at Mumbai and 2nd defendant is the Administrative Office of the 1st defendant and 3rd defendant is the Branch Office of the 1st defendant having their offices at Chennai and Bengaluru, respectively.

5. Plaintiff further contended that the defendants allegedly claiming themselves to be a Copyright Society registered under the provisions of the Copyright Act, 1957, claim exclusive right in respect of musical and literary works of its alleged members, started making aggressive marketing about their Society and about the alleged powers granted to them by the Government of India as regards the business to be carried on by them. It is also contended that in order to muster funds for their company had issued and have been issuing threatening public notices in various newspapers about their alleged powers directing those establishments and outlets which allegedly play pre-recorded music in their establishments or outlets to obtain necessary licence from the defendant. The defendants also threatened the establishments like plaintiff 7 that, they would get conducted the police raids on their establishments for alleged infringement of copy rights.

6. It is also the concern of the plaintiff that bare perusal of the contents of public notices shows that the defendants want to extort money not only from the plaintiff Company but also from all other establishments wherein alleged pre- recorded music is being played.

7. It is further contended by the plaintiff that the defendants, without any sort of right, title and interest are issuing threatening public notices. There is no need for the plaintiff to take any licence from the defendants and the defendants are illegally exercising the provisions of Section 64 of the Copyright Act which provides for conducting police raids for infringement of copyright.

8. It is further contended by the plaintiff that, plaintiff is not at all indulged in playing any music and literary works either live or pre recorded in their hotel premises, more so, that of the works of alleged members of 8 defendant Society nor they are conducting any live performances or events in public. Therefore, plaintiff felt that there is no necessity to take licence from defendants and inspite of making clear about the said factual aspects, defendants are threatening the plaintiff in necessitating them to obtain licence from the defendants.

9. It is further contended by the plaintiff that at different points of time, defendants have sent threatening letters to plaintiff demanding the plaintiff to obtain licence

and they also threatened with dire consequences of infringement of copyright.

10. It is further contended that under protest, without prejudice to its rights, plaintiff was constrained to obtain licence from defendants in order to avoid harassment and pressure from defendants. Plaintiff again contended that under protest such licence has been obtained. It is further contended by plaintiff that, even after obtaining of licence, the third defendant issued a letter stating that the licence 9 expired on 31.12.2007 and therefore, plaintiff is required to renew the licence and sought for compliance resulting in plaintiff clarifying its stand and did not meet the demand of Rs.7,86,718/- towards amount outstanding in respect of letter dated 17.08.2012 and Rs.52,500/- towards invoice dated 27.12.2012. Despite clarification issued by plaintiff, defendants continued to make illegal demand and ultimately caused a legal notice on 30.12.2012.

11. It is further contended that defendants counsel threatened the plaintiff company of legal proceedings in the event of failure to comply with the callings of the notice. On 09.01.2013, plaintiff issued reply to legal notice dated 30.12.2012 and despite the same, plaintiff received one more notice dated 17.01.2013 demanding payment of Rs.26,250/- vide invoice dated 11.01.2013. It is also contended that the defendants have got the general tendency of making illegal demands whenever there is performance even in the hotel premise of the plaintiff. Plaintiff also contended that it has not committed any 10 infringement of any copyright and therefore, demand made by defendants is per se not agreeable to the plaintiff and sought for a declaration as referred to supra in the suit.

12. After service of summons, defendants entered appearance and filed an application under Section 60 of the Copyright Act r/w Order VII Rule 11(d) of the Code of Civil Procedure to dismiss the suit of the plaintiff. In the affidavit of the authorized signatory of the first defendant, it is specifically mentioned that defendant is a Performing Right Society set up under the provisions of Chapter V of the Copyright Act, 1957 dealing with Copyright Society since 1969.

13. It is also contended that defendant No.1 inter alia administers the public performance rights of musical works and associated literary works of its members comprising of author-composers of such musical and literary works and music

publishers. By virtue of being duly authorized by its author- composer and publisher members, through 11 assignment of copyright of musical and literary work, defendant became owners of such copyright and therefore, they are having right to seek an order of restrain of any unlicensed public performance of its musical and literary works.

14. First Defendant also filed an application stating that a duly constituted suit in C.S.(O.S.)No.616/2013 is filed before the High Court of Delhi on 02.04.2013 against plaintiff for infringement of copyright and therefore, suit of the plaintiff became infructuous, in view of filing of duly constituted suit before the appropriate forum under the provisions of Section 60 of the Copyright Act, 1957 and therefore, sought for dismissal of the plaint.

15. The said application was opposed by the plaintiff by filing a detailed objection statement. Plaintiff contended that just because a suit is filed before the High Court of Delhi in C.S.(O.S.)No.616/2013, suit of the plaintiff cannot be sought to be dismissed by an application seeking rejection of plaint. 12

16. Plaintiff also contended that defendant did not chose to file written statement and only after completion of pleadings there could be an issue whether the suit could be maintainable in the Court at Bengaluru under Section 60 of the Copyrights Act and therefore, the application is premature and sought for dismissal of the application.

17. It is also contended that provisions of Section 60 of the Copyright Act, 1957 is not applicable to the case on hand and therefore, plaintiff was constrained to approach the Honble Supreme Court and the Honble Supreme Court had stayed the further proceedings pending before the High Court of Delhi and therefore, sought for dismissal of the application.

18. The Trial Court, after hearing the parties and after considering the relevant material on record including the authorities relied upon by the parties, allowed the application filed by the defendants and rejected the plaint. 13

19. Being aggrieved by the same, plaintiff has filed the present appeal on the following grounds: In the instant case on hand, howsoever the Plaint presented before the Court Below by the Appellant is read into, the Plaint Averments nowhere even suggests that the Suit is barred by Proviso to Section 60 of the Copy Right Act, 1957. This material and basic aspect of the matter is completely lost sight of by the Learned Judge. The Learned Judge on presentation of the Plaint by the Appellant being satisfied of the Prima Facie case made out by the Appellant and also being satisfied of the Plaint Averments as not being barred by law as on the date of presentation of the Plaint, was pleased to grant an Order of Temporary Injunction as against the Defendants, which aspect of the matter has also been completely lost sight of by the Learned Judge. Even according to the Learned Judge the entire cause of action for the so called rejection arises only after the date of filing of the above Suit and not prior to the filing of the Suit. Specific conclusion drawn by the Learned Judge for rejection of the Plaint is that since the Defendant has already instituted the Suit for Infringement under Section 55 of the Copy Rights Act, 1957, on 02.04.2013, i.e., subsequent to the filing of the Plaintiff's Suit on 19.01.2013, this Suit is barred by Proviso to Section 60, of the Copyright Act 14 1957. This is perverse, in the sense that the Learned Judge while acting under Order 7. Rule 11 (d), CPC, should have looked into only the Plaint averments without any addition or subtraction of any events and nothing else. The Learned Judge has further rejected the Plaint as having become infructuous acting under Proviso to Section 60 of the Copyright Act, 1957, r/w O. 7, Rule 11 (d), CPC. In order to properly appreciate the same, the said Proviso to Section 60, Copyright Act, 1957, is extracted herewith:

"Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him". Even the said Proviso also howsoever it is construed or read into, does not bar the Suit filed by the Appellant on 19.01.2013, even prior to filing of an Infringement proceedings initiated by the Defendants on 02.04.2013, before the Hon'ble Delhi High Court. As such, as on the date of filing of the Suit by the Plaintiff / Appellant, there was no bar under Proviso to Section 60, of the Copyright Act, 1957, so as to reject the Plaint. 15 As such, the Impugned Order is highly unsustainable in the eyes of law on both the counts i.e., the Plaint

Averments as well as being barred by Law. Admittedly the Suit is not dismissed as not maintainable as sought by the Defendants. On the other hand, the Plaint is rejected based on a subsequent event of filing of the Infringement Suit on 02.04.2013, by the Defendants acting under Proviso to Section 60, of the Copyrights Act, 1957, which is much against the basic tenets of law. The reliance placed by the Learned Judge in the Impugned Orders upon the Orders passed by the Hon'ble Supreme Court in SLP (C) 39994 of 2012, dated 30.09.2013, is in the case of M/s. Mac Gharles (I) Ltd., Vs. IPRSL and not pertaining to this Appellant as observed by the Learned Judge to come to the conclusion that the Suit has become infructuous as such the same requires to be rejected. This aspect of the matter is completely lost sight of by the Learned Judge. Even otherwise, said Orders dated 30.09.2013, by the Hon'ble Supreme Court in the above SLP is not a **RATIO DECIDENDI** to act as a binding precedent in the case on hand. On the other hand it is only an observation not even an **OBITOR DICTA**, that were made during the course of the said Orders while deciding the question whether the subsequent Suit 16 filed before the Delhi High Court requires to be stayed under Section 10, of the CPC or not?. The Learned Judge has completely misdirected himself by following the said Orders and has erroneously passed the Impugned Orders that requires to be interfered by this Hon'ble Court. The finding of the Learned Judge that the Plaintiff has not denied that the Defendants are the copyright owners of the IPRSL within the meaning of the Copyright Act, 1957, is completely surprising in nature as it is factually incorrect and could not have been made at a pre-trial stage itself. Though categorically it is denied in the Plaint at Para No.5, that the Defendants are the Copyright Owners, the Learned Judge has given a wrong finding of fact by ignoring the same. Basic condition imposed in the Section so as to make the Suit not maintainable is that there must be due diligence in the matter which is conspicuously missing the present conduct of the Defendant. This aspect of the matter is not even dealt by the Learned Judge. Though the Learned Judge says that there is due diligence, no reasons of whatsoever nature is assigned by the Learned Judge in the impugned orders. At the time of filing of the above Suit by the Plaintiff, admittedly the Defendants had not instituted the suit 17 for Infringement of their Copyrights. They entered appearance before the Hon'ble Court on 18.03.2013, and sought time to file their

Written Statement and Objections to IA No.1, accordingly the matter got adjourned to 18.04.2013. In the meantime, the Defendants as a Counter blast files the Suit for Infringement before the Hon'ble Delhi High Court on 02.04.2013. Though they had full knowledge of the fact that the Plaintiff had already instituted the Suit for a negative declaration under Section 60, without any due diligence in the matter, they bring in a counter Suit before the Hon'ble Delhi High Court subsequent to the filing of the above Suit. This vital aspect of the matter is completely lost sight of by the Learned Judge. Upon careful reading of the Proviso to Section 60, of the Copyright Act, 1957, what is discernible is that it is applicable only in respect of the following types of situations: a. Where the alleged Infringer file a Suit under Section 60, Copyright Act, despite having knowledge of the filing of the Suit by the alleged Owner under Section 55, Copyright Act, 1957. b. Where the alleged Owner file a Suit for infringement u/s. 55, against the alleged infringer prior in time than that of the Suit 18 filed by the alleged Infringer u/s. 60, of the Copyright Act, 1957. c. Where the alleged Infringer file a Suit u/S. 60, without being aware of the Suit already filed by the alleged Owner under Section 55, Copyright Act, 1957. If the entire Proviso to the Section 60, is read into carefully, it has got no retrospection and applicability of the said Section is only Prospective in nature i.e., any Suit filed u/s 60, subsequent to the Suit filed under Section to 55, are barred and not vice versa. In other words, Suit filed u/S60 prior to the Suit filed under Section 55, are neither barred nor it becomes infructuous. As such, the finding of the Court Below is completely illegal and unlawful. This aspect of the matter was duly and comprehensively dealt by the Single Judge of the Hon'ble High Court of Mumbai at Nagpur Bench in a similarly placed matter, in the case of Dhiraj Dharamdas Dewani Vs. M/s. Sonal Info Systems P. Ltd., in F.A No.1076 of 2011. The Application filed under order 7 Rule 11(d), was rejected by the Mumbai High Court. This Judgment and Decree was challenged before the Honble Supreme Court in SLP(C) No.28133 of 2012, which came to be dismissed on 22.11.2013. However, the question of Law as decided in the said Appeal is still kept open to 19 be decided at a later date. As such, the Learned Judge in the instant case on hand, could not have out rightly rejected the decision of the Mumbai High Court, though it has only persuasive value. All these aspects of the matter was duly considered by the Viewed from any angle the Impugned Orders is otherwise

opposed to law, facts, evidence on record and probabilities of the case.

20. Reiterating the grounds urged in the appeal memorandum, Sri B.S.Satyanand, counsel for appellant vehemently contended that the Trial Court has grossly erred in rejecting the plaint by exercising power under Order VII Rule 11(d) of the Code of Civil Procedure r/w Section 60 of the Copyright Act, 1957.

21. Learned counsel further pointed out that the suit filed by the plaintiff ought to have been disposed of on merits, inasmuch as the suit said to have been filed by the defendant before the High Court at Delhi did not act as deterrent in continuation of the suit before the Court at Bengaluru. 20

22. He further argued that the decision in the case of Dhiraj Dharamdas Dewani vs. M/s Sonal Info Systems Pvt. Ltd., reported in 2012(2)BomCR842 especially, paragraph-30 has got direct bearing on the case and therefore, suit ought to have been continued before the Trial Court and sought for allowing the appeal.

23. Per contra, Sri Dhyan Chinnappa, learned Senior Counsel representing the respondents contended that when once a suit has been filed by the defendant before the High Court at Delhi, seeking action against the appellant/plaintiff, the question of continuation of suit at Bengaluru would not arise at all.

24. Learned Senior Counsel further pointed out that the suit filed by the plaintiff was in anticipation of the positive action on the part of the defendants/respondents in protecting the rights of the defendants/respondents and when such suit is filed, on plain reading of the provisions of Section 60 of the Copyright Act, further action in the suit 21 filed by the plaintiff would come to a ground halt and the apprehension that, without there being a positive action, alleged empty threat can be questioned before the Court of law and therefore, in view of the filing of a duly constituted suit before the High Court at Delhi, alleged empty threat would no longer exist and sought for dismissal of the appeal. He placed reliance on paragraph 6 of the judgment of the High Court of Delhi in the case of M/s Super Cassette Industries Limited vs. M/s Bathla Cassettes India (P) Ltd., reported in 1993(25) DRJ410 so also Order of the High Court of Madras in the case of QD Seatamon Designs Private Limited vs. P.Suresh reported in (2019)1 MLJ163 He

further relied on the Order of the Honble Apex Court in the case of M/s Mac Charles (I) Ltd., vs. M/s Indian Performing Rights Society Ltd., passed in Special Leave Petition (C) No.39994/2012 dated 30.09.2013.

25. In the light of the rival contentions of the parties, this Court perused the material on record meticulously. 22 On such perusal of the material on record, the following points would arise for consideration: (i) Whether the filing of the suit by the defendants in C.C.(O.S.)No.616/2013 on the file of the High Court of Delhi would act as a positive action whereby the alleged empty threat has come to an end resulting in terminating the proceedings initiated in O.S.No.617/2013 on the file of the XVIII Additional City Civil Judge at Bengaluru City (CCH-10)?. (ii) Whether the impugned Order is suffering from legal infirmity and perversity and thus calls for interference by this Court?. (iii) What Order?.

26. In the case on hand, plaintiff running a hotel in the name and style M/s Chancery Pavilion is not in dispute. The correspondences especially the exchange of legal notice between the parties would clearly establish that in the events organized at the hostel, music was being played for which, the defendants claim proprietary right under the Copyright Act, 1957. The plaintiff filed the suit before the 23 Court at Bengaluru and cause of action paragraph reads as under: The cause of action for this suit arose on various dates on which an illegal, unlawful and unjustifiable threats were thrown by the defendants for an alleged infringement of copyrights and finally on 09.01.20213, when the defendants caused a legal notice threatening the plaintiff Company of initiating appropriate legal proceedings for an alleged infringement of copyrights, including that of exercising their alleged powers of conducting a police raid on the plaintiff company.

27. On conjoint reading of the cause of action paragraph and the prayer in the plaint, it is crystal clear that plaintiff is apprehending that defendants without taking any positive action, are only threatening the plaintiff in extorting illegal money. Soon defendants appeared before the Court, they have filed an application under Order VII Rule 11(d) of CPC r/w Section 60 of the Copyright Act and contended that plaint is to be rejected as defendants have already taken a positive action in

filing a suit in 24 CS(OS)No.616/2013 on the file of the High Court of Delhi on 02.04.2013.

28. The proviso to Section 60 of the Copyright Act, 1957 would clearly indicate that the action contemplated under Section 60 shall not apply, if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

29. In the case on hand, according to plaintiff, alleged action of defendants is an empty threat. The defendants have shown that positive action has been initiated by filing a proper suit before the High Court of Delhi which is numbered as CS(OS)No.616/2013 on 02.04.2013. In other words, since a separate suit is filed by the defendants, after suit came to be filed by the plaintiff in O.S.No.617/2013 on 19.01.2013 at Bengaluru, the said suit filed by the plaintiff at Bengaluru would not be maintainable. In other words, right of the plaintiff to initiate action under Section 60 of the Copyright Act, 1957 25 would automatically terminate, in view of the positive action taken by the defendants in filing CS(OS) No.616/2013 on 02.04.2013 on the file of High Court of Delhi, whereby, proviso to Section 60 of the Copyright Act, 1957, comes into play.

30. On careful reading of the decision relied on by the counsel for appellant/plaintiff referred to supra in the case of Dhiraj Dharamdas Dewani supra, the High Court of Bombay, has held that only function of proviso to Section 60 of the Copyright Act is to prevent filing of suit by alleged infringer when owner of the copyright has earlier filed a suit under Section 55 of the Act. In the case on hand, facts are distinguishable, inasmuch as, the suit is filed by the defendants on 02.04.2013 after the suit filed by the plaintiff on 19.01.2013.

31. Per contra, the decision relied on by the counsel for respondents rendered by the Honble Apex Court in the case of M/s Mac Charles (I) Ltd., supra, makes it clear 26 that, when once the positive action is taken by the copyright holder of infringement, action under Section 60 would no longer survive in view of proviso to Section 60. Therefore, this Court is of the considered opinion that the grounds urged in the appeal memorandum are hardly sufficient to allow the plaintiff to continue with the suit in O.S.No.617/2013 at Bengaluru by setting aside the

impugned Order, whereby, suit of the plaintiff came to be rejected under Order VII Rule 11(d) of CPC.

32. Further, it is always open for the plaintiff to have its defence filed before the High Court at Delhi and get the suit decided on the merits of the matter and scope of the present appeal would not permit to address the rival contentions with regard to merits of the matter. Accordingly, from the above discussion, the point No.1 is answered in the affirmative.

33. Further, the learned Trial Judge has rightly considered the purpose and objection of proviso to Section 27 60 in the factual circumstances of the case and rightly rejected the plaint. There is no legal infirmity or perversity in recording such a finding by the Trial Court in the impugned Order. Accordingly, point No.2 is answered in the negative.

34. Regarding Point No.3: In view of the findings of this Court on point Nos.1 and 2 as above, the following order is passed.

ORDER

(i) Appeal is meritless and is hereby dismissed. (ii) It is made clear that this Court has not expressed any opinion on the merits of the matter and parties are at liberty to urge the same in the pending suit in CS(OS)No.616/2013 pending before the High Court of Delhi. Sd/- JUDGE kcm

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