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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 267/2024, I.A. 7255/2024, I.A. 7256/2024, I.A.  
7257/2024, I.A. 7258/2024, I.A. 7259/2024 & I.A. 7260/2024.

**PHONOGRAPHIC PERFORMANCE LIMITED** ..... Plaintiff

Through: Mr. Chander M. Lall, Sr. Advocate  
with Mr. Ankur Sangal, Mr. Anirudh  
Bakhru, Ms. Sucheta Roy and Mr.  
Raghu Vinayal Sinha, Advocates.

versus

**PASS CODE HOSPITALITY PRIVATE LIMITED & ORS.**

..... Defendant

Through: Ms. Swathi Sukumar, Advocate with  
Mr. S. Santanam Swaminadhain, Mr.  
Sumehar Bajaj, Mr. Kartik Malhotra,  
Mr. Rishabh Aggarwal, Mr. Ritik  
Raghuwanshi, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

**ORDER**  
**10.04.2024**

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**I.A. 7256/2024 (Exemption from pre-institution mediation)**

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.***, FAO (COMM) 128/2021, exemption from attempting pre-institution mediation is allowed. Accordingly, the application stands disposed of.

**I.A. 7257 /2024 (Seeking leave to file additional documents)**



1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 [*'CPC'*] as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.

2. The plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

3. Accordingly, the present application is disposed of.

**I.A. 7258/2024 (Application under Section 149 of CPC)**

1. Counsel for plaintiff undertakes to file the Court fees within a week.

2. Based on this undertaking, the application is allowed and disposed of.

**I.A. 7259/2024 (Exemption from filing dim, illegible copies of dim annexures etc).**

1. Exemption is granted, subject to all just exceptions.

2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance before the next date of hearing.

3. Accordingly, the present application is disposed of.

**I.A. 7260/2024 (Seeking permission to file a pend drive in the present suit)**

1. This application has been filed under Section 151 of CPC by plaintiff seeking permission to file a compact disk in pen drive in the present suit.

2. On the facts stated above, the said application is allowed.

3. It is directed accordingly.



**CS(COMM) 267/2024**

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statements be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statements, the defendants shall also file affidavits of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record. Liberty is given to the plaintiff to file a replication within 30 days of the receipt of the written statements. Along with the replication, if any, filed by the plaintiff, affidavits of admission/denial of documents filed by the defendants, be filed by the plaintiff, without which the replications shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.
3. List before the Joint Registrar for marking of exhibits on 15<sup>th</sup> July, 2024.
4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

**I.A. 7255 /2024 (Application Under Order XXXIX Rules 1 & 2, CPC).**

1. This application has been filed under Order XXXIX Rules 1 & 2 of CPC as part of the accompanying suit filed by plaintiff seeking permanent injunction against the defendants restraining them from using from infringing the copyright works in the repertoire available on the plaintiff's website [www.pplindia.org/songs](http://www.pplindia.org/songs) and playing sound recordings in said repertoire at any of its premises, which are Food and Beverages [**F&B**]



outlets/restaurants run by the defendants.

2. Plaintiff claims to be the owner of copyrights in song recordings in said repertoire based on multiple assignments in its favour by copyright owners.

3. Plaintiff was registered as a Copyright Society under Section 33 of the Copyright Act, 1957 [*'the Act'*] till 21<sup>st</sup> June, 2014 whereafter, it surrendered its registration in view of the amendment in the rules. Plaintiff had re-applied for registration under the amended rules under Section 33 of the Act; said application for registration is still pending.

4. Accordingly, plaintiff issues licenses under Section 30 of the Act for the purpose of communication to the public of its repertoire of sound recordings through various licenses.

5. Plaintiff states that it serves useful public utility of providing access to various parties seeking to take a license for playing sound recordings. The tariff for these licenses is published by plaintiff on its website.

6. Defendants are owners of various restaurants and bars having several outlets throughout the country.

7. In May, 2022, plaintiff alleged that the defendants were exploiting sound recordings owned by plaintiff without duly taking a license, and therefore, filed a civil suit being *CS(COMM) 554/2022* titled *Phonographic Performance Limited v. Pass Code Hospitality Private Limited & Ors.* before the Saket Court District (South) New Delhi seeking an injunction and other attendant relief.

8. On 01<sup>st</sup> October, 2022, an *ex-parte ad interim* injunction in favour of plaintiff. Thereafter, parties amicably settled the matter by an agreement dated 04<sup>th</sup> December, 2022 where defendant no.1 agreed to use plaintiff's work after taking appropriate license.



9. Accordingly, an application under Order XXIII Rule 3 of CPC was moved and judgment and decree was obtained on 09<sup>th</sup> December, 2022 binding the parties to their respective statements and the terms of settlement.

10. The licenses obtained by defendant no.1 pursuant to the settlement were valid from 04<sup>th</sup> November, 2022 to 03<sup>rd</sup> November, 2023. Subsequent to the expiry of the term prescribed in the settlement agreement, plaintiff states that it sought to renew the copyright license and shared the new tariff rates with the defendant no. 1.

11. However, defendant no.1 did not agree to renew the license and insisted on the same license fee as was proposed by plaintiff in November 2022. Accordingly, the present suit came to be filed.

12. Mr. Chander M. Lall, Senior Counsel for plaintiff submits that plaintiff is the owner of copyright works assigned in their favour and should have the liberty to license their sound recordings at the rates that they determine.

13. Ms. Swathi Sukumar, counsel for defendant no.1 submits that the rates cannot be unreasonable and must be legitimate. She states that the settlement agreement itself provided for renewal in favour of the defendant no. 1 on the basis of legitimate rates. She further submits that the plaintiff-company itself avers that it monopolises the sound recording market by claiming ownership of almost 80% to 90% of the sound recordings, which in turn allows them to monopolise and dictate the tariffs as per their own wishes, whims and fancies.

14. She states that as opposed to the settlement agreement which had been arrived, for license fee of Rs. 7,80,852/- agreed for one year, demand of Rs. 19,13,560/- has been made for the subsequent year by the plaintiff. This, she says, is at least a 250% increase, and therefore, not reasonable nor legitimate.

15. Her resistance is on the grounds that Section 33 of the Act provides for



registration for a Copyright Society, which status the plaintiff does not have, and which statutory scheme allows for transparency of governance and regulation of tariffs.

16. Without prejudice, she states that the Court will have the power to determine rates under Section 31(1) (a) of the Act since, by prescribing such high tariffs, the sound recordings are effectively withheld from the public.

17. Mr. Lall, Senior Counsel for plaintiff submits that Section 31 of the Act is not applicable to this situation at all. As regards their right to license, without being registered under Section 33 of the Act, it is already determined by decisions of this Court and Bombay High Court.

18. In these facts and circumstances, this Court is of the opinion that, at this stage, defendant no.1 be permitted to play the sound recordings of the plaintiff's repertoire, on deposit of *ad hoc* license fee. This *ad hoc* arrangement is being made by the Court, considering that on one hand parties have to be heard ultimately on the application, and on the other hand sound recordings be available for use. This *ad hoc* arrangement is being made in the peculiar circumstances of facts as stated above, and shall not act as a precedent. The terms of this arrangement are as under:

- a) An amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) shall be deposited by defendant no.1 as *ad hoc* license fee valid from 04<sup>th</sup> November, 2023 till 03<sup>rd</sup> August, 2024.
- b) The said deposit shall be made by defendant no.1 within a period of two weeks from today with the Registry of this Court.
- c) Plaintiff shall issue to defendant no.1 a license valid from 04<sup>th</sup> November, 2023 till 03<sup>th</sup> August, 2024.
- d) Plaintiff will be entitled to withdraw, upon deposit by defendant no.1,



an amount of Rs. 8,00,000/- (Rupees Eight Lakhs only).

e) The balance amount of Rs. 7,00,000/- (Rupees Seven Lakhs only) shall be kept in an interest-bearing fixed deposit by the Registry for a term of one year initially and renewed thereafter.

19. Needless to state that the *ad hoc* arrangement, will be subject to further orders of the Court, and has been arrived at to balance the equities between the parties at this interim stage, without prejudice to the respective rights and contentions of the parties, as well as submissions made by the respective counsel.

20. Reply to the application has already been filed, rejoinder to the same may be filed within the six weeks from today.

21. List before the Court on 19<sup>th</sup> July, 2024.

22. Order be uploaded on the website of this Court.

**ANISH DAYAL, J**

**APRIL 10, 2024/RK/sc**

*Click here to check corrigendum, if any*