

**IN THE COURT OF MS NEELAM SINGH, DISTRICT JUDGE
(COMMERCIAL)-05, SOUTH EAST, SAKET COURTS, NEW
DELHI**

CS (COMM) No. 170/2021

In the matter of:

MS. ANAMIKA SOOD

Sole Proprietor-Koco7
R/o A-741, Sushant Lok-1
DLF Gurgaon, Haryana

..... Plaintiff

Versus

1. Google LLC, D/B/A Youtube

901, Cherry Ave
San Brune, CA 94066
USA

Legal@support.youtube.com

(Name deleted vide order dated 16.10.2023)

2. Saregama India Ltd.

A-62, 1st Floor, Fiee Complex,
Okhla Industrial Area,
Delhi-110020

.....Defendants

Date of institution of suit :	15.03.2021
Judgment reserved on :	01.04.2026
Date of Judgment :	18.04.2026
Final Decision :	Decreed

J U D G M E N T

1. The present suit has been filed by the Plaintiff seeking a mandatory injunction against the Defendants for reinstatement of the Plaintiff's copyrighted work (song) on the platform of Defendant No. 1-YouTube. The Plaintiff also seeks a declaration that it is the author and owner of the sound recording of the said song under Section 2(d) (v) of the Copyright Act, 1957, along with damages suffered on account of the alleged illegal takedown of the said copyrighted work

by the Defendants.

2. Briefly stated, the case of the parties is that the Plaintiff's song, "*Ferraree*" (hereinafter referred to as the "***Plaintiff's Song***"), was removed from the platform of Defendant No. 1, YouTube, pursuant to a takedown notice issued by Defendant No. 2 to Defendant No. 1. Defendant No. 2 contended that the Plaintiff's Song substantially reproduces the musical composition, particularly the hook portion, of its song "*Reshmi Salwar Kurta Jali Da*" (hereinafter referred to as "*Defendant No. 2's Song*") from the film "*Naya Daur*", and therefore constitutes an infringement of the copyright subsisting in the works of Defendant No. 2. On this basis, Defendant No. 2 further asserts that no valid copyright subsists in the Plaintiff's work.

Case of the Plaintiff

3. It is submitted that the Plaintiff is a renowned singer, composer, and songwriter of many popular songs. The Plaintiff is the exclusive copyright holder of over 75 musical works under Section 13 of the Copyrights Act, 1957 (hereinafter referred to as '*the Act*') and enjoys exclusive rights therein, in view of Section 14 of the Act, such as, the exclusive right to reproduce the work, issue copies thereof, issue licenses for use, etc. It is further averred that the Plaintiff has around 35 songs available on the platform of Defendant No. 1 since many years, and the same have gained immense popularity over time.

4. It is submitted that the Plaintiff has produced, written the lyrics of, and performed the song "*Ferraree*" (Plaintiff's Song). It is

averred that the music for the said song has been composed by Mr. Harmeet Singh, also known as MixSingh, who, vide an Assignment Agreement dated 04.09.2020, has irrevocably assigned and waived all rights therein and acknowledged the Plaintiff as the owner of the rights subsisting in the said musical work. It is further submitted that, being the producer of the sound recording of the song “*Ferrareee*,” the Plaintiff is the author and owner thereof.

5. It is submitted that the Plaintiff has also obtained copyright registration under Section 45 of the Act in respect of the aforesaid song “*Ferrareee*” from the Registrar of Copyrights. The Learned Registrar was pleased to grant copyright registration to the Plaintiff for the said song. Therefore, the Plaintiff is the exclusive copyright owner of the said work.

6. It is further submitted that a small portion of the tune of the Plaintiff’s song is inspired by an old Punjabi folk/traditional song, “*Sadke Sadke Jandiya*”; however, the Plaintiff’s song is an entirely new and original composition in terms of its sound recording, lyrics, and underlying musical works. The Plaintiff has expended substantial skill and labour in creating the said work and is, therefore, the sole copyright owner thereof, entitled to enjoy all benefits arising therefrom without undue interference from any party.

7. It is further submitted that Defendant No. 1 is an online music and video streaming platform operating under the name “YouTube” (www.youtube.com). Defendant No. 2, namely Saregama India Ltd., is a company engaged in the business of aggregation and licensing of sound recordings under the music label “Saregama.”

8. It is submitted that, in or around March 2020, a representative of the Plaintiff, Mr. Asif Mohammad Khan, approached Defendant No. 2 to negotiate a deal for the purchase of rights in the Plaintiff's song "*Ferraree*." However, the said negotiations did not culminate in any agreement. Thereafter, in March 2021, the Plaintiff uploaded the said song on various platforms, including that of Defendant No. 1, i.e., YouTube. It is further submitted that, upon being satisfied as to the Plaintiff's rights in the said work, Defendant No. 1 permitted the Plaintiff to make the song available to the public at large via its platform.

9. While the Plaintiff was engaged in promoting the said song, she received an email from Defendant No. 1 on 11.03.2021 informing her of the takedown of the Plaintiff's song from its platform pursuant to a notice issued by Defendant No. 2. It is submitted that Defendant No. 1 merely intimated the Plaintiff of the receipt of the said notice without furnishing a copy thereof or affording the Plaintiff any opportunity to respond. The said takedown is, therefore, unilateral, arbitrary, and unjust. It is further submitted that Defendant No. 1, without conducting due diligence, acted upon the misconceived and baseless notice issued by Defendant No. 2.

10. Being aggrieved by the aforesaid arbitrary action, the Plaintiff addressed a response to Defendant No. 1 on 12.03.2021, reiterating her ownership over the copyright in the said song and calling upon Defendant No. 1 to restore the same on its platform. A similar communication was also sent to Defendant No. 2 requesting withdrawal of the takedown notice. In its reply dated 13.03.2021, Defendant No. 2 alleged that the musical composition of its song "*Reshmi Salwar Kurta Jali Da*" had been adapted and used by the

Plaintiff in her song. In rejoinder thereto, the Plaintiff clarified that her song is entirely distinct and that her song “*Ferraree*” is inspired by the Punjabi folk/traditional song “*Sadke Sadke Jandiya*.”

11. It is submitted that, with a view to ensuring the success and public reach of the said song, the Plaintiff incurred substantial expenditure amounting to approximately Rs. 35 lakhs towards advertisements, promotions, and marketing. The illegal takedown of the Plaintiff’s original work from Defendant No. 1’s platform has caused significant financial losses to the Plaintiff.

12. It is submitted that a comparison of the Plaintiff’s song “*Ferraree*” and Defendant No. 2’s song “*Reshmi Salwar Kurta Jali Da*” would, prima facie, demonstrate that the two works are entirely distinct in terms of lyrics, composition, tone, and melody. It is averred that, during the course of negotiations in March 2020, the Plaintiff’s representative had shared a demo of the Plaintiff’s song with Defendant No. 2. Thus, Defendant No. 2 had knowledge of the Plaintiff’s work at an early stage and did not raise any objection at that time. It is also the plaintiff’s case as the deal with the Defendant no.2 could not fructify, the defendant no. 2 retaliated by issue of the take down notice.

13. It is further submitted that the Plaintiff’s song was uploaded on Defendant No. 1’s platform on 11.02.2021 and had garnered approximately two million views. In an attempt to curb the growing popularity and success of the Plaintiff’s song, Defendant No. 2 deliberately issued the takedown notice. The said conduct is mala fide, misconceived, and self-serving. It is further submitted that the Plaintiff’s song achieved substantial success shortly after its release,

attracting nearly two million views within a short span of time and gaining widespread public appreciation. The Plaintiff was also approached by various producers and event companies for live performances. However, owing to the illegal takedown of the song from Defendant No. 1's platform, the Plaintiff suffered considerable losses, including cancellation of promotional events that were contingent upon the successful release of the song. The Plaintiff has also suffered embarrassment, mental agony, and irreparable injury on this account.

14. The Plaintiff, therefore, seeks reinstatement of her song on the platform of Defendant No. 1, along with damages for the losses incurred due to the said acts. The Plaintiff further seeks a declaration that she is the sole author and owner of the copyright in the sound recording of "*Ferraree*" under Section 2(d)(v) of the Copyright Act, 1957, and prays that Defendant No. 2 be permanently restrained from initiating any further takedown actions or otherwise interfering with the Plaintiff's rights in the said work.

15. A perusal of the record reveals that, vide order dated 16.10.2023, the Ld. Predecessor of this Court deleted Defendant No. 1 from the array of parties with the consent of the Plaintiff, as the Plaintiff's song had been reinstated on the platform of Defendant No. 1, i.e., YouTube, and consequently, no relief survived against Defendant No. 1. Accordingly, this Court shall consider the claims of the Plaintiff in the present case only insofar as they pertain to Defendant No. 2.

Case of the Defendant

16. It is submitted that Defendant No. 2 is a company duly incorporated under the Companies Act, 2013, having its place of business, inter alia, at A-62, 1st Floor, FIEE Complex, Okhla Industrial Area, Phase II, New Delhi–110020. It is further submitted that the registered office of Defendant No. 2 is situated at 33, Jessore Road, Kolkata. Defendant No. 2 is engaged in the business of acquisition of copyrights in sound recordings, as well as the literary, musical and dramatic works embodied therein, and is further engaged in the distribution, sale, and commercial exploitation of such sound recordings through various modes and mediums. It is submitted on behalf of Defendant No. 2 that it has been a prominent and illustrious entity in the field of recorded music in India for over a century. It was formerly known as “The Gramophone Company of India Limited” and also as “His Master’s Voice (HMV)”.

17. It is submitted that Defendant No. 2 owns copyright in numerous sound recordings and the underlying literary, musical and dramatic works. It enters into various licensing agreements with third parties to permit the use and exploitation of its copyrighted works. It is further averred that in the year 1955, Defendant No. 2 (then known as “The Gramophone Company Limited”) entered into an agreement dated 17.10.1955 with M/s BR Films, whereby it acquired copyright in the sound recordings as well as the underlying musical, literary and dramatic works in the songs forming part of cinematograph films produced by M/s BR Films during the subsistence of the said agreement.

18. It is further submitted that the cinematograph film “Naya Daur” was produced during the subsistence of the aforesaid agreement between the parties. Consequently, the copyright in the sound recordings and the underlying literary, musical and dramatic works of the said film stood assigned to Defendant No. 2. It is thus submitted that Defendant No. 2 is the rightful owner of copyright in respect of all songs of the said film, including the sound recordings and the underlying works.

19. It is further submitted that the name of Defendant No. 2 also appears on the inlay cards of the cinematograph film “Naya Daur” as the owner/publisher of the sound recordings and the underlying literary, musical and dramatic works. In view of Section 55(2) of the Copyright Act, 1957, Defendant No. 2 is presumed to be the owner of the copyright subsisting in the said works.

20. It is further submitted that on 31.05.2007, Defendant No. 2 and M/s BR Films entered into a supplementary agreement concerning the payment of royalty for non-physical exploitation of the sound recordings as well as the underlying literary and musical works assigned to Defendant No. 2 under earlier agreements. It is submitted that under the said supplementary agreement, Defendant No. 2 was entitled to both physical and non-physical exploitation of the said works. It is further submitted that another supplementary agreement dated 30.10.2015 was executed between the parties, whereby the aforesaid rights continued to vest in Defendant No. 2.

21. It is submitted that by virtue of the aforesaid agreement and supplementary agreements, Defendant No. 2 continues to be the

owner of copyright in respect of the sound recordings and the underlying works of the cinematograph films produced by M/s BR Films during the relevant period. It is further submitted that, having valid and subsisting copyright in the said works, Defendant No. 2 enjoys exclusive rights to reproduce, issue copies, publicly perform, communicate to the public, synchronize, make further sound recordings or cinematograph films, adapt, modify, and otherwise exploit the said works.

22. It is submitted that on 11.03.2021, Defendant No. 2 came across the music video of the Plaintiff's song on the Plaintiff's YouTube channel. Upon listening to the said song, it became evident to Defendant No. 2 that the Plaintiff had copied the musical composition of the "hook part" of Defendant No. 2's song, titled "Reshmi Salwar Kurta Jali Da" from the film "Naya Daur". Aggrieved by the same, Defendant No. 2 issued a takedown notice through the mechanism provided on Defendant No. 1's platform, i.e., YouTube, pursuant to which the Plaintiff's song was taken down.

23. It is submitted that the present suit filed by the Plaintiff is not maintainable, as the Plaintiff has copied an integral and substantial part of Defendant No. 2's song, namely, the musical composition of "Reshmi Salwar Kurta Jali Da" from the cinematograph film "Naya Daur", in respect of which Defendant No. 2 had acquired rights under the agreement executed with M/s BR Films. It is further submitted that the copied portion constitutes the "hook part" or "catch part" of the song, which is the most recognizable and distinctive element of the musical work and is widely associated with the song by the general public.

24. It is the case of Defendant No. 2 that if the “hook part” or “catch part” of a song is copied, the same would amount to actionable infringement of the entire work. It is contended that the Plaintiff’s plea that her song is inspired by an old Punjabi folk/traditional song is false and misconceived, and has been raised only as an afterthought to deflect liability. According to Defendant No. 2, no explanation has been furnished by the Plaintiff as to how an identical musical element forming part of Defendant No. 2’s song came to be incorporated in the Plaintiff’s song. It is submitted that a comparison of the respective hook portions clearly demonstrates that the Plaintiff’s song has copied the Defendant No. 2’s work.

25. Defendant No. 2 submits that the Plaintiff’s act of creating and publishing the impugned song without obtaining any licence or authorization amounts to infringement of its copyright. It is further contended that such acts are causing reputational harm and adversely affecting the economic interests of Defendant No. 2, particularly vis-à-vis its existing licensees. On this basis, it is argued that the copyright registration obtained by the Plaintiff is liable to be cancelled. It is also contended that a copyright registration certificate is only prima facie proof of the particulars entered therein and not of the validity of the copyright, and in the present case, the Plaintiff has not even placed a valid certificate on record but has merely relied upon an online status extract devoid of material particulars.

26. It is further submitted that the takedown notice issued by Defendant No. 2 to the platform of Defendant No. 1 (YouTube) was lawful and justified. On the contrary, the Plaintiff, being an infringer, ought to be restrained from using or adapting Defendant No. 2’s

works. It is asserted that the Plaintiff has lifted the integral and recognizable portion of Defendant No. 2's song, which constitutes its most distinctive feature.

27. It is also contended that the Plaintiff has failed to prove expenditure on promotion, popularity of the song, or any loss suffered. All allegations of financial loss, cancellation of events, reputational harm, and mental agony are baseless. Defendant No. 2 asserts that any alleged loss is a consequence of the Plaintiff's own infringing conduct.

28. Defendant No. 2 has further stated that while it is not denied that the Plaintiff's representative had approached it in or around March 2020 for a potential deal regarding the Plaintiff's song, such negotiations did not fructify. It is denied that the takedown notice was issued as retaliation; rather, it was issued solely to protect Defendant No. 2's copyright.

Replication and Issues

29. The plaintiff has filed a replication to the Written Statement submitted by the defendant. In the said replication, the plaintiff has categorically denied all the allegations and contentions raised by the defendant. The Plaintiff has reiterated, reaffirmed and relied upon the averments of the plaint. In addition, the plaintiff submits that the present suit was instituted on 15.03.2021 and summons were issued to be served upon the defendant. Vide email dated 16.03.2021, the plaintiff was informed that the copyright claim on the Plaintiff's Song has been reinstated. The plaintiff submits that it is thus apparent that upon receiving the summons of the present suit, Defendant No.2, i.e.,

M/s Saregama India Ltd. Impliedly accepted that it had wrongly claimed copyright over plaintiff's work. It is averred that the song of the plaintiff is again available on the platform of Defendant No.1-YouTube. It is submitted that by making false and frivolous allegations of copyright infringement, Defendant No.2 is attempting to disturb the *status quo* granted in respect of such reinstatement of the Plaintiff's work.

30. It is further submitted that Defendant No.2 is not only making frivolous claims over the ownership of the song, "Reshmi Salwar Kurta Jali Da, but has failed to provide any reasonable justification with regard to the alleged similarities between the Plaintiff's song and 'Reshmi Salwar Kurta Jali Da'. The plaintiff reiterates its stand that the Plaintiff's Song is inspired from an old Punjabi Folk/ Traditional Song- 'Sadke Sadke Jandiya', however, the plaintiff has put in substantial labour and judgment into creating the Song- 'Ferrareee' and it is a completely new composition in terms of the sound recording, lyrics and other underlying musical works. It is submitted that upon listening both the songs (Plaintiff's and Defendant No.2's Songs) together it becomes amply clear that the songs are absolutely different in every form, whatsoever, including lyrics, music, tone, melody, etc. Defendant No.2 has failed to draw any similarity between Plaintiff's Song and Defendant No.2's Song.

31. It is further averred that in order to claim ownership of the sound recording of the Song- 'Reshmi Salwar Kurta Jali Da', Defendant No.2 has placed on record an alleged Agreement dated 17.10.1955, executed between Predecessor of the Plaintiff and M/s BR Films. The Agreement is further supported by supplementary agreement dated May 2007 and October 2015, respectively. However,

it is submitted on behalf of the plaintiff that a bare perusal of the said agreements reveals that Defendant No.2 cannot, in any manner, claim ownership over the sound recording of the song- “Reshmi Salwar Kurta Jali Da”, as on the present date. It is submitted that upon executing the alleged Agreement on 17.10.1955, Defendant No.2 cannot continue to claim ownership of the sound recording as on the present date, that is, after 66 years from the date of execution. It is well settled that copyright over sound recordings subsists only until Sixty (60) years from the beginning of the calendar year following the year in which the sound recording is published. In this regard, the plaintiff places reliance upon Section 27 of the Act, which expressly stipulates the term of copyright in respect of a sound recording. It is submitted that Defendant No.2 can claim ownership in respect of copyright of the sound recording of ‘Reshmi Salwar Kurta Jali Da’ only within 60 years from the date of execution of the Agreement. The plaintiff further denies the subsisting copyright ownership of Defendant No.2 in respect of the Defendant No.2’s Song on the ground that the Agreement between the Predecessor of the Plaintiff and M/s BR Films was executed only for a period of three (3) years, which expired by efflux of time in August 1958 itself. Thus, the Defendant No.2 cannot extend the terms of the Agreement beyond the stipulated time frame therein.

32. On the basis of the pleadings of the parties, following issues have been framed by Ld. Predecessor of this Court on 16.10.2023 as under:

1. Whether the plaintiff is entitled for declaration qua copyright of song “Ferraree”?

OPP

2. Whether the plaintiff is entitled for damages,

as prayed for? OPP

3. Whether the plaintiff has copied the music work of song “Ferraree” from defendant no. 2’s to song ‘Reshmi Salwar Kurta Jaalida’? OPD-2

4. Relief.

Plaintiff’s Evidence

33. As per the order of Ld. Predecessor of this Court, LC Sh. Rudresh Akshay Sain, was appointed for recording evidence of the parties and accordingly, Ld. LC has recorded the evidence of both the parties. Plaintiff led evidence by way of affidavit Ex. P1 and examined herself as PW-1. Plaintiff relied upon the following documents:

- 1. Lyrics of Song “Ferraree” is **Ex.PW1/1***
- 2. DVD containing sound recording of song “Ferraree” is **Ex.PW1/2***
- 3. Assignment Deed dated 04.09.2020 is **Ex.PW1/3***
- 4. NOC dated 29.08.2020 is **Ex.PW1/4***
- 5. Copyright Certificate granted by Registrar is **Mark A***
(This document was de-exhibited and marked as Mark A by Ld. LC as the plaintiff had not taken permission of the court before placing it on record. Vide Order dated 29.10.2024 Ld. Predecessor of this court had allowed the plaintiff’s application under Order XI to place this document on record)
- 6. Email by Shifali Munshi of Events PR Fashion Lifestyle dated 13.03.2021 is **Ex.PW1/6***
- 7. Various cancellation of events to be hosted by Plaintiff is **Ex.PW1/7***

8. Screenshot of whatsapp messages between Plaintiff and Asif Muhammad Khan is **Ex.PW1/8**

9. Copy of e-mail dated 11.03.2021 sent by YouTube is **Ex.PW1/9**

10. Copy of email dated 12.03.2021 sent to YouTube by Plaintiff Counsel is **Ex.PW1/10**

11. Copy of email dated 12.03.2021 sent by Plaintiff's counsel to Defendant no.2 is **Ex.PW1/11**

12. Copy of email dated 13.03.2021 sent by Defendant-Saregama to Plaintiff's Advocate is **Ex.PW1/12**

13. Copy of email dated 13.03.2021 by Plaintiff's advocate is **Ex.PW1/13**

14. Copy of email dated 15.03.2021 is **Ex.PW1/14**

15 Copy of email dated 16.03.2021 is **Ex.PW1/15**

16 Copy of Sponsorship Agreement with Anish Katyal is **Mark B**

17 Copy of distribution agreement dated 01.03.2021 with Nirvana Digital Studio Pvt. Ltd. by the Plaintiff is **Mark C**

34. PW-1 was cross-examined at length by Ld. Counsel for Defendant No. 2. In her cross-examination, PW-1 stated that her song is based upon a folk song and, therefore, no assignment deed was required to be obtained from any person. PW-1 stated that she had executed two assignment deeds in respect of the song "Ferrareee" and that she had brought the original assignment deeds to Court. She identified one signatory as Mr. Anish Katyal and the other as M/s Nirvana Digital.

35. PW-1 further admitted that she had not filed Exhibits PW-1/16 and PW-1/17 (de-exhibited) along with the plaint and that the same were filed subsequently along with her affidavit in evidence without seeking leave of the Court. She deposed that she had entered into an assignment deed with Nirvana on 04.09.2020. However, she also stated that she had not signed any assignment deed on 04.09.2020 with any person.

36. PW-1 further stated in her cross-examination that it is incorrect that the song which is the subject matter of the present suit was composed by Mr. Harmeet Singh. She deposed that no assignment deed dated 04.09.2020 was executed by Mr. Harmeet Singh in her favour and that only a No Objection Certificate dated 29.08.2020 was executed by him. She volunteered that the song was written and sung by her, and that the original composition is based on a folk song, while the music director only undertook mixing and programming.

37. PW-1 admitted that she has placed on record only a photocopy of the alleged NOC dated 29.08.2020. She further stated that she has not brought the books of accounts maintained by her in the ordinary course of business and has not reflected the alleged amount of Rs. 20 lakhs as receivables therein. She volunteered that since the said amount was never received, there was no reason to reflect it in her books of accounts. She admitted that only photocopies of documents were filed along with the plaint.

38. PW-1 further deposed that her claim for damages was based on an alleged sponsorship arrangement of Rs. 30 lakhs, out of which the entire amount was to be paid by sponsors. However, she admitted that no original documents in support thereof have been placed on the

judicial record and that the said document (photocopy) was filed for the first time along with her affidavit without seeking leave of the Court.

39. PW-1 stated that she had never heard the song “Reshmi Salwar Kurta Jali Da,” and volunteered that she was informed about the same by Defendant No. 2. She denied any resemblance between the said song and her composition and specifically stated that she has not used any portion of the said song in “Ferrareee.” She further stated that she cannot state her income for the financial year 2021 and thereafter, and admitted that she had not received any payment from YouTube for the streaming of her song. She volunteered that the song was taken down pursuant to objections raised by Defendant No. 2, and therefore no payments were made.

40. PW-1 also deposed that there was no formal agreement between her and YouTube for payment, and that payments, if any, were to be made to the digital distribution company with whom she had executed an agreement. She further stated that since she has not filed the original documents on record, she cannot confirm whether she can identify the signatures on the digital distribution agreement. She stated that her claim in the suit is for damages and declaration of copyright and that no other relief has been sought.

41. She admitted that she has placed on record only a photocopy of the copyright certificate as prima facie proof of her lyrics and that the same was filed for the first time along with her affidavit and was not part of the plaint. She further admitted that, subsequent to the filing of the present suit, Defendant No. 1 reinstated her song on its platform. Thereafter, PW-2, Mr. Pankaj Kumar Pandey, Examiner of

Trademark, GI and Copyright, Boudhik Sampada Bhawan, Plot No.32, Sector-14, Dwarka, Delhi-110078, a summoned witness, has brought on record the following document.

1. *Certified Copy of Copyright Registration Certificate is Ex.PW2/1*

42. PW-2, in his cross-examination by Ld. Counsel for Defendant No. 2 stated that he does not have any personal knowledge regarding Ex.PW2/1. Thereafter, P.E was closed.

Defendant's Evidence

43. On behalf of defendant no. 2, Sh. Yash Asai, led evidence by way of affidavit, *Ex.DW1/A* and examined himself as DW-1. Sh. Sanjay Jain relied upon the following documents:

1. *Original Board Resolution dated 31.07.2020 is ExDW-1/1*
2. *Original Certificate of Incorporation consequent to name change from Gramophone Company of India to Saregama India Limited is Ex.DW-1/2(OSR)*
3. *Photocopy of Agreement dated 17.10.1955 between Defendant no.2 and M/s BR Film is Mark -A*
4. *Original Inlay Card of the Firm "Naya Daur" is Ex. DW-1/4(OSR)*
5. *Original of Supplementary Agreement dated 31.05.2007 and 30.10.2015 between Defendant no.2 and M/s BR Film is Ex.DW-1/5(colly)(OSR)*

44. DW-1 was cross-examined by learned counsel for the Plaintiff. In his cross-examination, DW-1 stated that he has been working with Defendant No. 2 company as Vice President (Legal) since the year

2013 and holds degrees in B.Sc. and LL.B. He stated that he has knowledge of the matter; however, he admitted that the contents of his affidavit are based on company records and not on his personal knowledge. He further stated that the film “*Naya Daur*” was released in the year 1957. He expressed lack of knowledge regarding the structure of M/s BR Films in the year 1955 but stated that, as of 2007, it was a partnership firm comprising Mr. Abhay Chopra and Mr. Kapil Chopra as partners. He further stated that he was not aware whether M/s BR Films had been reconstituted between 1955 and 2007.

45. DW-1 deposed that the copyright strike against the Plaintiff’s song “*Ferrareee*” was issued by Mr. Abhishek Ghosh using YouTube CMS. He admitted that, after service of notice of the present suit, Defendant No. 2 withdrew the copyright strike. He further stated that Defendant No. 2 has a separate team for acquisition of copyrighted works and admitted that no document has been filed to demonstrate that the hook part of the Plaintiff’s song is the same as that of Defendant No. 2’s song “*Reshmi Salwar Kurta Jali Da.*”

46. He further stated that no fresh agreement was executed with M/s BR Films after the agreement dated 30.10.2015. He denied that the film “*Naya Daur*” was assigned or licensed to Defendant No. 2 subject to payment of royalties, and asserted that royalties as per the agreement dated 30.10.2015 had been paid. He further stated that, apart from the agreements dated 17.10.1955, 31.05.2007, and 30.10.2015, no other agreement exists between Defendant No. 2 and M/s BR Films in respect of the film “*Naya Daur.*”

47. DW-1 denied the suggestion that the copyright strike was withdrawn due to lack of similarity between the two songs. He also

denied that Defendant No. 2's song "*Reshmi Salwar Kurta Jali Da*" was inspired by the Punjabi folk song "*Sadke Sadke Jandiya*," and stated that he had not heard the said folk song. He further denied that the Plaintiff's song and Defendant No. 2's song are different in terms of lyrics, music, tone, notes, melody, or composition, and also denied that the Plaintiff's song is an original work. He denied that the Plaintiff is the owner of the sound recording of the song "*Ferraree*." He further denied that any events scheduled at venues such as Junk Yard Café (Connaught Place), Toy Room Club (Aerocity, Delhi), Local (Connaught Place), and Sexy Soda (Connaught Place) were cancelled due to the takedown of the Plaintiff's song.

48. In response to a specific question, DW-1 stated that he was not aware whether Mr. Asif Mohammad Khan had approached Defendant No. 2 for negotiating the purchase of rights in the Plaintiff's song, and further stated that he neither knew nor had met the said person. He also stated that he was unaware of the date of release of the Plaintiff's song on YouTube and the time gap between its release and the issuance of the copyright strike. DW-1 further deposed that he has some knowledge of the functioning of YouTube and admitted that if a song is removed due to a copyright strike, all views of the said song are automatically removed. He clarified that monetization on YouTube depends on advertisements and watch time rather than mere view count. He also stated that higher viewership increases the likelihood of a video appearing on the YouTube home screen, which in turn may increase watch time.

49. DW-1 denied the suggestions that the Plaintiff suffered losses of Rs. 40 lakhs due to sponsors backing out, Rs. 20 lakhs due to cancellation of events, or Rs. 3 lakhs paid to Mr. Harmeet Singh. He

further denied that the Plaintiff suffered any mental agony or that Defendant No. 2 is liable to pay litigation costs of Rs. 10 lakhs.

Final Arguments on behalf of Plaintiff

50. Written Submissions have been filed on behalf of plaintiff. It is submitted by Ld. Counsel for the plaintiff that plaintiff has produced, written the lyrics, and performed the song titled “Ferrareee.” It is thus contended that the Plaintiff is the author and first owner of the copyright in the sound recording of the said song. It is further submitted that, being the lyricist, the Plaintiff is also the author and first owner of the underlying literary work.

51. With regard to the musical composition, it is submitted that the music for the Plaintiff’s song was composed by Mr. Harmeet Singh, also known as MixSingh, who has irrevocably assigned all his rights in favour of the Plaintiff vide an Assignment Agreement dated 04.09.2020. Accordingly, the Plaintiff claims ownership over the underlying musical work as well.

52. It is further submitted that a small portion of the musical work in the song “Ferrareee” is inspired by an old Punjabi folk song, “Sadke Sadke Jandiye Mutiyare Ni.” However, it is contended that the Plaintiff’s song constitutes a completely new and original composition, having been created through substantial skill, labour, and judgment, with distinct lyrics, sound recording, and musical arrangement.

53. It is therefore submitted, that the plaintiff is the undisputed owner of the copyright in the sound recording of the song, “Ferrareee”

and as well as in the underlying literary and musical works. It is reiterated that the plaintiff has also obtained registration of the copyright vide registration no. L-100096/2021.

54. The Plaintiff places reliance upon a judgment of the Hon'ble Supreme Court in *Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1*, to contend that originality in copyright law does not require novelty or non-obviousness, as is required in patent law, but rather that the work must be the result of the author's skill, labour, and judgment. On this basis, it is contended that the Plaintiff is entitled to copyright protection in respect of the song "Ferrareee."

55. Insofar as the claim for damages is concerned, learned counsel for the Plaintiff submits that, owing to the illegal takedown of the song by Defendant No. 2, the Plaintiff has suffered substantial losses. It is submitted that several promotional events scheduled for the launch of the song had to be cancelled, resulting not only in monetary loss but also in reputational harm.

56. It is further submitted that the copyright strike and subsequent takedown were widely disseminated among artists and other industry stakeholders, causing humiliation and irreparable injury to the Plaintiff's reputation. In the written submissions, the Plaintiff has furnished a detailed account of the monetary losses allegedly suffered due to the takedown of the song. However, it is noted that no such specific pleadings in respect of the quantum of these losses are found in the plaint or in the replication. The same is reproduced hereinbelow:

S No.	Particulars	Damage Suffered
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		(INR)
1	Amount Paid to Mr. Harmeet Singh (MixSingh)	3,00,000
2.	Amount of loss suffered due to backing out of sponsors - Sponsorship Agreements dated 2.12.2020 for INR 20 Lakhs and INR 10 Lakh - Distribution Agreement dated 1.03.2021 with Nirvana Digital Studio Pvt. Ltd.	40,00,000
3.	Amount of loss due to cancellation of various events at the following locations- - The Junkyard Cafe (Connaught Place) - Toy Room Club (AeroCity, Delhi) - Local (Connaught Place) - Sexy Soda (Connaught Place)	20,00,000
4	Damages on account of mental agony and suffering	15,00,000
5	Cost of litigation	10,00,000
	Total	88,00,000

57. It is further submitted that the witness of Defendant No. 2 has admitted that no documents have been placed on record by Defendant No. 2 to demonstrate any similarity between the “hook part” of the Plaintiff’s song and that of Defendant No. 2’s song. It is also submitted that upon removal of a song pursuant to a copyright strike,

the views of the video are automatically reduced to nil. Since payments to an artist on platforms such as YouTube are contingent upon the number of hours the content is viewed by the public, it is contended that, due to the alleged illegal copyright strike initiated by Defendant No. 2, all the views garnered by the Plaintiff's song were lost, resulting in substantial financial loss on account of diminished viewership.

58. It is reiterated that no similarity exists between the Plaintiff's work and the song of Defendant No. 2 titled "Reshmi Salwar Kurta Jali Da." Learned counsel for the Plaintiff places reliance upon the judgment of the Hon'ble Supreme Court in *RG Anand v. Delux Films & Ors.*, (1978) 4 SCC 118, to contend that where the same idea is developed in a different manner, certain similarities may arise, which do not constitute infringement.

59. The Plaintiff further contends that the works must be compared as a whole and ought not to be dissected into individual components. It is submitted by learned counsel for the Plaintiff that, in terms of the "lay observer test" as laid down by the Hon'ble Supreme Court, the works are to be assessed from the perspective of an ordinary observer who perceives the work in its entirety rather than in fragmented parts. In this regard, reliance is placed upon *RG Anand v. Delux Films & Ors.*, (1978) 4 SCC 118 and *Bikramjeet Singh Bhullar v. Yash Raj Films Private Limited and Others*, 2023 SCC OnLine Del 8212.

60. It is submitted that the only possible similarity between the Plaintiff's work and the song of Defendant No. 2 lies in the musical composition, which itself is inspired by the Punjabi folk song "Sadke Sadke Jandiye Mutiyare Ni," over which no party can claim exclusive

copyright. However, when the two works are compared as a whole, it is contended that the beat, lyrics, theme, tone, and overall musical composition are materially distinct. Thus, from the standpoint of a lay observer, the songs of the Plaintiff and Defendant No. 2 are entirely different.

61. It is further submitted that the burden lies upon Defendant No. 2 to establish substantial similarity between the works in order to sustain a claim of copyright infringement. It is contended that it is settled law that a prerequisite for infringement is demonstrable copying of the copyrighted work. In this regard, reliance is placed upon ***India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.***, 2012 SCC OnLine Del 4298 and ***Bikramjeet Singh Bhullar v. Yash Raj Films Private Limited and Others*** (supra).

62. It is further submitted by Ld. Counsel for the Plaintiff that the contention of Defendant No. 2 that the Plaintiff has copied the musical work of the song “Reshmi Salwar Kurta Jali Da” is misplaced. It is submitted that it is an admitted position that the copyright in the sound recording of the said song expired in the year 2017.

63. It is also submitted that the Plaintiff’s song and its underlying musical composition are inspired by the Punjabi folk song “Sadke Sadke Jandiyeh Mutiyare Ni,” and it is trite law that no party can claim a monopoly over traditional or folk music. In this regard, reliance is placed upon ***Super Cassettes Industries Limited v. Bathla***, 2003 SCC OnLine Del 843.

64. It is further submitted that there is no copyright in ideas, principles, subject matter, themes, or historical facts, and that

copyright protection is confined to the form, manner, arrangement, and expression of the work. Reliance is again placed upon ***RG Anand v. Delux Films & Ors., (1978) 4 SCC 118.***

65. Lastly, it is submitted that the chain of ownership claimed by Defendant No. 2 from M/s BR Films is incomplete and legally unsustainable. It is contended that, upon a holistic reading of the Agreement dated 17.10.1955, particularly Clauses 1 to 4 and 6, it is evident that the agreement pertains only to gramophone recording rights. While the agreement acknowledges the existence of tapes for recording, no rights in respect thereof were assigned. It is further submitted that the renewal agreement dated 22.07.1957 was limited to a period of one year, commencing on 12.08.1957 and expiring on 12.08.1958, and that no extension of rights under the Agreement dated 17.10.1955 subsists beyond 12.08.1958.

Final Arguments on behalf of Defendant

66. Written Submissions have been filed on behalf of defendant no. 2. Ld. Counsel for Defendant No. 2 submits that the present suit is wholly misconceived and liable to be dismissed, as the Plaintiff has failed to establish any subsisting copyright in the song “Ferrareee”. It is contended that Defendant No. 2 is the lawful owner of copyright in the sound recording as well as the underlying literary and musical works of the song “*Reshmi Salwar Kurta Jali Da*” from the cinematograph film “*Naya Daur*”. In this regard, it is submitted that M/s BR Films, being the producer of the said cinematograph film, was the first owner of copyright therein, and by virtue of an Agreement dated 17.10.1955, all rights in the sound recordings and underlying works of films produced during the subsistence of the said agreement

stood assigned to Defendant No. 2. Reliance is also placed upon supplementary agreements dated 31.05.2007 and 30.10.2015, which, according to Defendant No. 2, reaffirm and continue its rights in the said works. It is further submitted that the name of Defendant No. 2's predecessor appears on the inlay cards of the film, thereby raising a presumption of ownership.

67. It is further argued that the Plaintiff has failed to establish her ownership qua the song "Ferraree". Learned counsel submits that no original documents have been placed on record to prove ownership of copyright in the said song. It is contended that the copyright registration certificate relied upon by the Plaintiff is merely prima facie proof of entries and does not confer ownership. It is further argued that the said certificate pertains only to the literary work and not to the sound recording or musical composition.

68. Ld. Counsel for Defendant No. 2 further submitted that the Plaintiff has taken contradictory stands with respect to authorship of the musical work. While in the plaint it is stated that the music was composed by Mr. Harmeet Singh (MixSingh) and assigned to the Plaintiff vide Assignment Deed dated 04.09.2020, in cross-examination the Plaintiff has denied the existence of such assignment and admitted that only a No Objection Certificate was executed. It is thus contended that the Plaintiff has failed to establish a valid chain of title in respect of the musical work.

69. It is further submitted that in view of Section 13(3)(b) of the Copyright Act, copyright does not subsist in a sound recording if, in making such recording, copyright in any underlying musical work has been infringed. According to Defendant No. 2, the Plaintiff has

admittedly not obtained any license for use of the musical composition of Defendant No. 2's song "Reshmi Salwar Kurta Jali Da", and therefore, the Plaintiff's work is infringing in nature and not entitled to copyright protection.

70. On the aspect of infringement, it is argued that the Plaintiff has copied the "hook part" or "catch portion" of Defendant No. 2's song, which constitutes a substantial and essential part of the musical work. It is submitted that in musical works, even copying of a part of the composition, particularly the most recognizable portion, is sufficient to constitute infringement. Reliance is placed on legal principles to contend that copying of the musical component alone, even without the lyrics, amounts to infringement.

71. It is further argued that the Plaintiff has deliberately appropriated the most attractive and distinctive portion of Defendant No. 2's song with a view to capitalize on its popularity, which amounts to actionable piracy. Ld. Counsel for Defendant No.2 also submitted that the Plaintiff has failed to substantiate her claim for damages. It is contended that no documentary evidence has been placed on record to support the alleged losses. The Plaintiff has admitted in cross-examination that no such losses have been reflected in her books of accounts, nor has any payment been received from YouTube. It is further submitted that the sponsorship and distribution agreements relied upon by the Plaintiff were not taken on record by this Court and, therefore, cannot be relied upon. In view of the aforesaid submissions, it is prayed that the present suit be dismissed with exemplary costs.

Findings of the Court

72. On the basis of pleadings, arguments, evidence rendered by both the parties and documents placed on record, my issue wise findings are as under-

Issue No. 1: Whether the plaintiff is entitled for declaration qua copyright of the song ‘Ferraree’? OPP

Issue No. 2: Whether the Plaintiff has copied the musical work of Defendant No. 2’s song “Reshmi Salwar Kurta Jali Da”? OPD

73. The onus to prove Issue No. 1 lies upon the Plaintiff, whereas the onus of Issue No. 3 lies upon Defendant No. 2. Since both issues are intrinsically connected, they are being adjudicated together. The plaintiff seeks declaration that the plaintiff is the author of the sound recording, viz., ‘Ferraree’ under section 2(d)(v) of the Act.

74. At the outset, it is apposite to set out the legal framework governing authorship and ownership of copyright in a “sound recording” and its underlying literary, dramatic and musical works. Under Section 2(xx) of the Copyright Act, 1957, a “sound recording” means a recording of sounds from which such sounds may be produced. A “musical work” under Section 2(p) means a work consisting of music and includes any graphical notation of such work but does not include words or action intended to be sung, spoken or performed with the music. A “literary work” under Section 2(o) includes within its ambit lyrics of a song.

75. Under Section 13 of the Copyright Act, 1957, copyright subsists in original as well as derivative works, viz., a) original literary, musical

and dramatic works; as well as in b) cinematograph films; and c) sound recordings. In view of Section 17 of the Act, the author of a work shall be the first owner of the copyright therein. In terms of Section 2(d)(v) of the Act, the “author” of a sound recording is its producer. Thus, the producer is deemed to be the first owner of copyright in the sound recording. Similarly, in terms of Section 2(d)(i) the author of a literary work is its writer, and in terms of Section 2(d)(ii) the author of a musical work is its composer.

76. Section 14 of the Act confers upon the owner of such copyright exclusive rights, specifically in relation to a sound recording, *namely*, the exclusive rights to make any other sound recording embodying it; sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording; and communicate the sound recording to the public.

77. At the outset, in order to determine whether the Plaintiff is entitled to a declaration of copyright in the sound recording “*Ferraree*,” this Court must examine the originality of the underlying works, *namely*, the literary and musical works of the said sound recording. This becomes necessary in light of Section 13(3)(b) of the Copyright Act, 1957, which provides that copyright shall not subsist in a sound recording if, in making such recording, copyright in any underlying literary, dramatic or musical work has been infringed.

78. Therefore, before granting a declaration in favour of the Plaintiff, this Court must examine whether the underlying literary and musical works in the Plaintiff’s sound recording titled “*Ferraree*” are original works or whether they infringe any pre-existing copyright, including the rights claimed by Defendant No. 2. Thus, the question of

entitlement to copyright (Issue No. 1) is inextricably linked with the question of alleged copying (Issue No. 3), and both issues are accordingly taken up together. The Plaintiff has asserted that she has produced, written the lyrics of, and performed the song “*Ferraree*.” It is further the case of the plaintiff that the musical composition was created by Mr. Harmeet Singh (MixSingh), who assigned all his rights in favour of the Plaintiff vide Assignment Deed dated 04.09.2020. The Plaintiff has also placed reliance upon a copyright registration certificate, bearing Registration No. L-100096/2021, evidencing registration of the underlying literary work.

79. The Copyright Registration Certificate, though limited to the literary and dramatic components of the Plaintiff’s song “*Ferraree*”, lends credible support to the Plaintiff’s claim that the underlying literary work (i.e., the lyrics) constitutes her original creation. Significantly, Defendant No. 2 has neither effectively challenged the validity of the said registration nor adduced any cogent evidence to displace the presumption arising therefrom, thereby leaving the Plaintiff’s claim in respect of the literary work substantially un rebutted.

80. Insofar as the musical composition is concerned, Defendant No. 2 has sought to dispute the Plaintiff’s ownership by placing reliance on certain portions of the cross-examination of PW-1. However, upon a holistic appreciation of the record, this Court finds that the No Objection Certificate (NOC) (Ex.PW1/4) as well as the Assignment Agreement (Ex.PW1/3) placed on record by the Plaintiff sufficiently establish that the rights in the musical composition stood validly assigned in her favour by Mr. Harmeet Singh (MixSingh). Mere inconsistencies sought to be elicited in cross-examination, in the

absence of any substantive rebuttal evidence, are insufficient to dislodge the documentary proof evidencing such assignment. Accordingly, the Plaintiff's rights in the musical work forming part of the song "Ferraree" stand duly established.

81. The Plaintiff has further candidly admitted that a portion of the musical composition is inspired from an old Punjabi folk/traditional song, namely, "Sadke Sadke Jandiye Mutiyare Ni." At this stage, it is necessary to consider the law relating to originality in derivative or inspired works. In **Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1**, the Hon'ble Supreme Court held:

"32. The word "original" does not mean that the work must be the expression of original or inventive thought. The Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and in the case of literary work, with the expression of thought in print or writing. The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work—that it should originate from the author; and as regards compilation, originality is a matter of degree depending on the amount of skill, judgment or labour that has been involved in making the compilation. The words "literary work" cover work which is expressed in print or writing irrespective of the question whether the quality or style is high. The commonplace matter put together or arranged without the exercise of more than negligible work, labour and skill in making the selection will not be entitled to copyright. The word "original" does not demand original or inventive thought, but only that the work should not be copied but should originate from the author. In deciding, therefore, whether a work in the nature of a compilation is original, it is wrong to consider individual parts of it apart from the whole. For many compilations have nothing original in their parts, yet the sum total of the compilation may be original. In such cases the courts have looked to see whether the compilation of the unoriginal material called for work or skill or expense. If it did, it is entitled to be considered original and to be protected against those who wish to steal the fruits of the work or skill or expense by copying it without taking the trouble to compile it themselves. In each case, it is a question of degree whether the labour or skill or ingenuity or expense involved in the compilation is sufficient to warrant a claim to originality in a compilation.

57. The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is

created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, co-ordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. On the face of the provisions of the Indian Copyright Act, 1957, we think that the principle laid down by the Canadian Court would be applicable in copyright of the judgments of the Apex Court. We make it clear that the decision of ours would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Act there is no copyright in the original text of the judgments. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author.....

60. Although for establishing a copyright, the creativity standard applies is not that something must be novel or non-obvious, but some amount of creativity in the work to claim a copyright is required. It does require a minimal degree of creativity. Arrangement of the facts or data or the case law is already included in the judgment of the court. Therefore, creativity of SCC would only be addition of certain facts or material already published, case law published in another law report and its own arrangement and presentation of the judgment of the court in its own style to make it more user-friendly. The selection and arrangement can be viewed as typical and at best result of the labour, skill and investment of capital lacking even minimal creativity. It does not as a whole display sufficient originality so as to amount to an original work of the author. To support copyright, there must be some substantive variation and not merely a trivial variation, not the variation of the type where limited ways/unique of expression available and an author selects one of them which can be said to be a garden variety. Novelty or invention or innovative idea is not the requirement for protection of copyright but it does require minimal degree of creativity. In our view, the aforesaid inputs put by the appellants in the copy-edited judgments do not touch the standard of creativity required for the copyright."

82. Thus, the law is well settled that even a derivative work, if it involves sufficient skill, labour and minimal creativity, qualifies as an original work. Applying the aforesaid test, this Court has compared the Plaintiff's song "Ferraree" with the traditional Punjabi folk song "Sadke Sadke Jandiye Mutiyare Ni." It is a matter of common knowledge that the said folk song forms part of the traditional cultural

repertoire of Punjab and has existed in the public domain for decades, having been rendered by numerous artists over time. Such traditional works, by virtue of antiquity and lack of identifiable authorship, do not enjoy copyright protection and form part of the public domain.

83. A perusal and comparison reveal that while the Plaintiff's song draws limited inspiration from the folk melody, the overall composition, arrangement, rhythm, lyrics, beat structure, and production are materially distinct. The Plaintiff has infused modern musical elements, independent lyrical content, and a distinct sound recording, thereby transforming the traditional base into a new expression.

84. Accordingly, this Court is of the considered view that the Plaintiff's underlying literary and musical works satisfy the test of originality as laid down in *Eastern Book Company (supra)*, involving sufficient skill, labour and a minimal degree of creativity.

85. The legal position with respect to works derived from traditional music is further elucidated in *Super Cassettes Industries Ltd. v. Bathla Cassette Industries Pvt. Ltd.*, 2003 SCC OnLine Del 843. The Hon'ble Delhi High Court, while relying upon *R.G. Anand v. Delux Films*, (1978) 4 SCC 118, held:

"51. In this respect the position of law arising from the impact of Section 13, 14 and 51 relating to copyright and its infringement expounded by the Hon'ble Supreme Court in R.G. Anand v. Delux Films, (1978) 4 SCC 118 is relevant and reads as under:

"2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be

actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

.....

.....

In another, and perhaps a clearer case, it may be necessary for this Court to interfere and remove the impression which may have gained ground that the copyright belonging to an author can be readily infringed by making immaterial changes, introducing insubstantial differences and enlarging the scope of the original theme so that a veil of apparent dissimilarity is thrown around the work now produced. The Court will look strictly at not only blatant examples of copying but also at reprehensible attempts at colourable imitation.”

55. Version recordings would really be such sound recordings where while being inspired by the original melody a distinct interpretation, different both in presentation, rhythm and orchestral arrangement emerges. For example the famous hits of the pop-group Beatles have been rendered by the Royal Philharmonic Orchestra under the title ‘Symphonic Beatles’. The title of the ‘Symphonic Beatles’ sound recording clearly states as under:

‘Symphonic Beatles’

Classic Instrumental Interpretation from The Royal Philharmonic Orchestra conducted by Louis Clark.”

56 This sound recording is an orchestral interpretation of 15 famous hits of the Beatles. It is this sound recording which can be considered to be a version recording. While there is no doubt in any listener's mind that he is hearing a version of say, the well-known Beatles song ‘Eleanor Rigby’, originally sung by the Beatles, yet it cannot be said for a moment that a listener would be led to believe that the Beatles are singing it. What is adapted in a version recording is the original melody, but the beat, the orchestral arrangement and indeed the end product is what can be called a substantially new arrangement. In such a version recording while the original melodic arrangement inspires the new creation yet it is a version unmistakably different and distinct from the original. Such a version

recording, if made in India may enjoy the benefit of Section 52(1)(j) subject to satisfaction of the requirements of the said provision and Rule 21(2)(b) but not a total copy though with different singers, as in the plaintiff's case, which may have the effect of persuading lay listeners as if it was the original sound recording. Thus the Royal Philharmonic Orchestra cannot complain of violation of copyright in case the Beatle's song 'Eleanor Rigby' is sung by some other musician or performed by some other orchestra, as at best its rights are akin to rights derived from Section 52(1)(j) of the Act.

57 For example the Bhajan 'Raghupati Raghav Raja Ram' which is a part of the Indian history of independence was originally composed and sung by Pt. Vishnudigambar Paluskar at Mahatma Gandhi's meetings. The melody of 'Raghupathi Raghav' did figure in the soundtrack of the film 'Purab Aur Paschim'. That does not give any right to the producer of 'Purab and Paschim' soundtrack to claim copyright against others who may record or sing 'Raghupati Raghav Raja Ram'. Similarly a well-known traditional Khyal composition in Indian classical music in Raag Kalyan 'Main Vaari Vaari Jaon' has been sung in the film 'Dil Se'. Whatever be the legality and efficacy of such a version, the adaptation of such a traditional composition by a contemporary composer/performer does not in law give him any rights capable of being asserted against other performers who may sing/record the said traditional composition. Similarly the well-known Meera Bhajan "Payojee Maine Ram Ratan Dhan Payo" was first recorded by the well-known classical musician, Shri D.V. Paluskar. It has subsequently been rendered and recorded by current performers. Owners and/or right holders of such versions cannot lay any claim to exclusive rights over their version recording or indeed legitimately claim to be composer of such traditional melodies.

58 Thus by taking recourse to the traditional reservoir of Indian Classical Raags and traditional folk music, compositions based thereon may result in a sound recording. Such a derivative by a contemporary composer/performer may not refer to the original source in their sound recording. In such a situation, the current composer cannot claim exclusive rights to such a sound recording, which are assertable against any other performer/sound recording based on such traditional repertoire. Thus no enforceable rights can be acquired by any contemporary musician in rendering/recording traditional compositions. Consequently, the traditional repertoire of Indian music which may not now enjoy copyright protection due to passage of time and being in the public domain, cannot be appropriated by any individual by virtue of a later and current sound recording by excluding other performers and/or composers. The tradition of Indian classical and folk music is a valuable public heritage common to all adherents and cannot be purloined by a contemporary performer/composer by denying to others the benefit of the same."

86. Applying the aforesaid principles, it is evident that the Plaintiff's song is, at best, inspired by a traditional folk melody in the

public domain. The Plaintiff's work constitutes a distinct and original expression with substantial variation in composition, lyrics and arrangement. However, no monopoly can be claimed over the underlying folk tune by any party, including the Plaintiff or Defendant No. 2. It is, therefore, clear that no party can claim exclusivity over a traditional folk composition. At best, rights subsist only in the distinct expression brought about by a particular artist.

87. This now brings the Court to the allegation of copying vis-à-vis Defendant No. 2's song "*Reshmi Salwar Kurta Jali Da*" from the film "*Naya Daur*." It is Defendant No.2's case that the plaintiff's song has copied the "hook part"(musical composition) of the Defendant No.2's song "*Reshmi Salwar Kurta Jaldi Da*" from the film '*Naya Daur*'.

88. Defendant No. 2 has asserted ownership over the song "*Reshmi Salwar Kurta Jali Da*" from the film "*Naya Daur*," on the basis of an Agreement dated 17.10.1955 executed with M/s BR Films by the predecessor of Defendant No.2, i.e., The Gramophone Co. Ltd., whereby, according to Defendant No. 2, copyright in the sound recordings and underlying works of films produced during the subsistence of the agreement stood assigned to it. Defendant No. 2 has further relied upon supplementary agreements dated 31.05.2007 and 30.10.2015 to assert continued rights.

89. However, even assuming that such rights were validly assigned, the same are subject to statutory limitation under Section 27 of the Act. Admittedly, the song "*Reshmi Salwar Kurta Jali Da*" was published in the year 1957. Therefore, copyright in the sound recording subsisted only for sixty years, i.e., until the year 2017. The said provision is reproduced as under:

“27. Term of copyright in sound recording.-In the case a sound recording copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the sound recording is published.”

90. Consequently, on the date of institution of the present suit in 2021, no subsisting copyright existed in the said sound recording. Thus, Defendant No. 2 cannot assert infringement of the sound recording per se. Further, upon comparison of the Plaintiff’s song and Defendant No. 2’s song, this Court finds that the two works are materially distinct. The lyrics, composition, rhythm, tempo, and overall auditory impression are entirely different. The alleged similarity in the “hook part” has not been substantiated by any cogent evidence.

91. Applying the “lay observer test” as enunciated in **R.G. Anand (supra)**, no reasonable listener would form an unmistakable impression that the Plaintiff’s work is a copy of Defendant No. 2’s work. The Hon’ble Supreme Court in **R.G. Anand (Supra)** held-

“3. One of the surest and safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator, or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent works appears to be a copy of the original.”

92. In view of the aforesaid discussion, this Court holds that the Plaintiff’s song “*Ferrareee*” comprises original literary and musical works, notwithstanding limited inspiration drawn from a traditional Punjabi folk song in the public domain. The Plaintiff, being the producer, is the author and first owner of the sound recording under Section 2(d)(v) read with Section 17 of the Act. The Plaintiff is entitled to a declaration of copyright in the sound recording

“Ferrareee.” However, it is clarified that the Plaintiff’s rights are confined to her original expression embodied in the sound recording “Ferrareee.” The Plaintiff cannot claim exclusivity over the underlying traditional folk melody “Sadke Sadke Jandiye Mutiyare Ni,” which remains part of the public domain.

93. Defendant No. 2 has failed to establish any substantial copying or infringement by the Plaintiff. The claim of Defendant No. 2 is further weakened by the expiry of copyright in its sound recording. Accordingly, Issue No. 1 is decided in favour of the Plaintiff and Issue No. 3 is decided against Defendant No. 2.

Issue No. 2: Whether the Plaintiff is entitled to damages, as prayed for? OPP

94. The onus to prove this issue was upon the Plaintiff. The Plaintiff, in the plaint, has prayed for damages to the tune of Rs. 20,00,000/-. However, in the final written submissions, the Plaintiff has enhanced the claim to Rs. 88,00,000/- by providing a segregation of alleged losses under various heads. It is pertinent to note that such segregation and enhancement of the claim has been introduced for the first time at the stage of final arguments and does not form part of the original pleadings, i.e., the plaint or the replication.

95. In this regard, reliance may be placed on the judgment of the Hon’ble High Court of Delhi in ***Kabushiki Kaisha Toshiba v. Tosiba Appliances Co., 2024 SCC OnLine Del 5594***, wherein it has been held as under:

“138. ... The Court's decision on awarding damages must be predicated on a substantive examination of evidence that justifies the quantum of such compensation. The burden of proving damages rests

unequivocally with the Plaintiff. To succeed, the Plaintiff must present compelling evidence substantiating the claimed damages resulting from the Defendant's alleged infringement. They must provide a reasonable estimate of the amount claimed, foundational facts, account statements, and supporting documentary and/or oral evidence..... Speculative or hypothetical assertions cannot form the basis for a substantial damages award.

139 The Plaintiff's late introduction of a claim for damages... is premised on speculative assumptions rather than tangible evidence... such an approach... without evidence or proof... cannot be accepted... In absence of direct, tangible evidence linking the Defendant's actions to quantifiable losses... this method of calculation remains conjectural and insufficient... Thus... the Court is not inclined to award damages as claimed...

140 Nonetheless, the Court is empowered to award nominal damages... where the infringement of rights is clear... albeit the actual damage might not be quantifiable due to the Plaintiff's lack of express evidence..."

96. Similarly, in **B.C. Hasaram & Sons v. Smt. Nirmala Agarwal**, **RFA(COMM) 214/2025**, the Hon'ble Delhi High Court has held:

41 In the present case, it is clear that no evidence was led either by the plaintiff or the defendant regarding the claim of damages. Though there was no predicament for the defendant to lead evidence, it is the plaintiff upon whom the burden of proof lies to prove the estimated damages as claimed in the suit and there cannot be any room for hypothetical or arbitrary estimations. The principle "he who claims has to prove" squarely applies to the facts of this case. The aforesaid principle means that the person making a factual claim in a legal proceeding must provide evidence to prove that claim to the Court. This is known as the burden of proof, and it lies with the party who asserts a legal right or liability based on specific facts. Moreover, it is apparent that only at the stage of written submissions did the plaintiff introduce the computation and provided material which consequently did not form part of any evidence nor was it subject to any cross-examination by the defendant. Further, as is evident from paragraphs 35 and 36 of the impugned judgment, there is no clear analysis or rational basis indicating how the damages were quantified.....

42 There is already a rich history of precedents establishing that quantum of damages awarded require a reasoned basis tied to evidence of actual loss. In the present case, the absence of cogent reasoning and evidence linking the damages to proven injury, diverges the award from the compensatory principle that governs damages thereby risking unjust enrichment. Further, it must be understood that while awarding damages, the Court plays a dual role of not only safeguarding the rights of the parties but also balancing the broader contextual factors i.e., compensatory or punitive or both. Thus, we find that it is the evidence which constitutes the bedrock for any award of compensatory or punitive damages."

97. Applying the aforesaid principles to the facts of the present case, it is evident that the Plaintiff has failed to sufficiently establish her entitlement to the quantum of damages claimed. The enhanced claim of Rs. 88,00,000/- is not supported by pleadings or evidence and appears to be an afterthought introduced at the stage of final submissions. The Plaintiff has not placed on record any cogent documentary evidence such as account statements, proof of payments, or verified records to substantiate the alleged financial losses.

98. Further, as per the Plaintiff's own case, the impugned video was taken down from the platform on 11.03.2021 and was reinstated on 16.03.2021. Thus, the period of removal was brief and not of such prolonged duration as to justify the substantial damages claimed. The contention regarding loss of viewership has also not been substantiated by any documentary evidence on record. Likewise, the alleged cancellation of promotional events has not been proved, as the Plaintiff has failed to examine any independent witness or produce sufficient documentary proof to corroborate such claims.

99. In view of the above, this Court finds that the Plaintiff has failed to discharge the burden of proving actual damages to the extent claimed. However, considering that the Plaintiff's song was admittedly taken down pursuant to the copyright strike issued by Defendant No. 2, and that such takedown, though for a limited duration, would have caused some degree of inconvenience, loss of viewership, and mental distress, this Court is of the view that the Plaintiff is entitled to nominal damages. Accordingly, a sum of Rs. 5,00,000/- is awarded to the Plaintiff as damages on account of mental agony, inconvenience, and loss of viewership and revenue resulting from the takedown of the song. This issue is decided partly in favour

of the Plaintiff and against Defendant No. 2.

Relief

100. In view of the foregoing discussion and findings on the issues framed, the suit is partly decreed in favour of the Plaintiff and against Defendant No. 2. It is declared that the Plaintiff is the author and owner of the sound recording of the song “Ferraree” within the meaning of Section 2(d)(v) of the Copyright Act, 1957, subject to the observations made herein regarding works derived from traditional/folk compositions. The allegations of copyright infringement as raised by Defendant No. 2 are rejected. The Plaintiff is further held entitled to damages quantified at Rs. 5,00,000/-, in terms of the findings under Issue No. 2. All other reliefs sought by the Plaintiff, not specifically granted herein, stand declined. Decree sheet be drawn accordingly. Parties to bear their own costs. **File be consigned to record room after due compliance.**

**Announced & dictated
in the open Court on this
18th day of April, 2026**

(NEELAM SINGH)
District Judge
Commercial Court-05
South East, Saket Courts,
New Delhi