SUPREME COURT OF INDIA

Gramophone Co. of India Ltd.

Vs.

Mars Recording Pvt.Ltd.

C.A.No.6122 of 2001

(S.R.Babu and S.V.Patil JJ.)

03.09.2001

JUDGMENT

Rajendra Babu, J.

1. Leave granted.

2. Respondent No.1 brought a suit in O.S.No.4792/98 in the Addl. City Civil Court at Bangalore on the following pleadings:

> "The plaintiff during the course of their business, were willing of sound recording into audio cassettes of three titles viz., 'kallusakkare kolliro', 'maduve maduve maduve' and 'chinnada hadugalu'. The copyrights of the songs containing in these three sound recording cassettes vest with the defendant No.1. Accordingly the plaintiff, as contemplated under the *Copyright Act, 1957* [hereinafter referred to as 'the Act'] issued a notice as per sub-clause (ii) of clause (j) of sub-section (1) of Section 52 of the Act on 16.5.1998 notifying their intention to record 1000 nos. each of audio cassettes of the above three titles. The said letter was enclosed with three inlay cards and three demands of Rs.1,500/- each towards the royalty payable in favour of the copyright owner i.e., the first defendant. The plaintiff has also informed the Registrar of Copyright Board, New Delhi on the same day notifying the same.
>
> The plaintiff waited for 15 days and later on recorded and released the above three titled sound recording in the form of audio cassettes in the open market and the cassettes have been circulated through Karnataka State. The first defendant belatedly on 8.6.1998 addressed a letter to the plaintiff expressing their regret and inability to permit the plaintiff to make version recordings of songs of above three titles and accordingly returned the demand drafts."

3. Respondent No.1 sought for permanent injunction restraining the appellant from seizing the respondents the aforesaid three titled audio cassettes and for certain incidental reliefs and

an application temporary injunction was granted by the Trial Court to the same effect. On appeal to the High Court, the said order was affirmed. Hence this appeal.

4. The Trial Court and the High Court held that respondent No.1 had complied with the requirements of Section 52(1)(j) of the Act read with Rule 21 of the Copyright Rules, 1958 [hereinafter referred to as 'the Rules'] by issuing a notice of his intention to make a sound recording and has provided copies of all covers or labels with which the sound recordings are to be sold and has paid in the prescribed manner to the owner of copyright in the work royalties of Rs.1,500/- each in respect of all such sound recordings to be made by him and Rs.1,500/- is the rate fixed by the Copyright Board in this behalf. The High Court accepted the arguments of respondent No.1 that in the event of licence or consent is not given even after compliance of Section 52(1)(j) of the Act within 15 days, the licence is deemed to have been granted and the person producing the cassette after the expiry of 15 days is not said to have infringed copyright. The High Court proceeded to further state that Section 52(1)(j) of the Act does not require prior consent from the owner of the copyright and that the owner is entitled to royalty fixed and a notice of the intention of respondent No.1 to make the cassettes. It is made clear that the intention of respondent No.1 is not copying but making sound recording and in this case admittedly the musician is different, singer is different, only respondent No.1 is using the lyrics owned by the appellant. The High Court noticed that Section 52(1)(j) of the Act recognises the right of the copyright owner and since respondent No.1 was making an independent recording, the recording of respondent No.1 and that of the appellant are different. Quality of sound recording is also different from each other. Section 20 of the Act which gives the right to the owner for 60 years which is subject to the provisions of Section 20, respondent No.1 having complied with the requirements of Section 52(1)(j) of the Act, it has to be construed that there is a deemed provision of having given consent and, therefore, the Trial Court was right in holding that sub-clauses (i) and (ii) of Section 52(1)(j) of the Act should be read disjunctively and not co-jointly and accepted this contention raised on behalf of respondent No.1. The argument advanced based on Section 60 of the Act that if a person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the copyright, any person aggrieved thereby may institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and he can also obtain damages and that a suit of the present nature could not have been filed. This aspect also did not appeal either to the Trial Court or the High Court.

5. Shri R.F.Nariman, learned Senior Advocate appearing for the appellant, submitted that this case gives rise to decision on an important aspect of entertaining a suit under Section 41 of the Specific Relief Act in addition to copyright. He took us through the entire Copyright Act explaining the scope thereof. He submitted that the interpretation given by the Trial Court, as affirmed by the High Court, ignores the intendment of the provisions of the Act; he drew our attention to the *Statement of Objects & Reasons of the Copyright (Amendment) Act, 1994* which clearly stipulates that the amendments were made 'to protect the interest of authors, assignors or licensors in regard to the assignment of copyright and the issue of licenses";

"to extend more effective protection to owners of copyright" and "to simplify and improve the law relating to copyright and related rights, in the interests of the general public, and in particular of the users as well as the owners of the rights. The interpretation, he contended, now placed on behalf of respondent No.1 would defeat the very object of these amendments.

He contended that there are three kinds of licenses available under the Act, viz.,

1. Voluntary license;
2. Compulsory license; and
3. Statutory license.

All the licensing provisions are contained in Chapter VI of the Act and Chapter XI deals with infringement of copyright and it is not permissible to read into the chapter a provision which purportedly creates a new kind of license, namely, an involuntary license. He submitted that the view taken by the High Court and the Trial Court in this case brings about an involuntary license by misreading Section 52(1)(j) of the Act. He submitted that on a correct reading of Section 52(1)(j)(i) of the Act would be that sound recordings of that work have been made by the license of the owner of the copyright in the work, or with the consent of the owner of the right in the work. The term 'by license' also finds a mention in Section 30 of the Act. He submitted that prior to the 1994 amendment of Section 52(1)(j) of the Act , the expression 'previously' was used in sub-clause (i) and which has been subsequently omitted. The entirety of the case argued on behalf of respondent No.1 is on the pre-amended position and, therefore, the High Court and the Trial Court were wrong in their conclusion. The contention put forth on behalf of the respondents that the present case is a case of 'version recording' and they are referred to as 'debased versions'; a different singer, a different orchestra and a different studio only perpetuates and compounds the act of piracy and the case put forth on behalf of respondents does not find support in any literature. He referred to an enormous amount of legal literature on the matter.

Shri Kapil Sibal, learned Senior Advocate appearing for respondent No.1, contended that the question of law involved in the present case is whether an entity which seeks to make 'version recording' or 'cover versions of an earlier sound recording' requires the consent of the owner of the copyright. The answer to this, he submitted, would turn on an interpretation of Sections 2(m)(iii) and 52(1)(j) of the Act. 'Cover versions' or 'version recordings' are fresh recordings made using a new set of musicians. Shri Sibal maintained that there is a clear distinction between voluntary licenses and non-voluntary licenses. While Section 30 of the Act refers to voluntary licenses in which case the consent of the party is concerned. As opposed to this, there are two types of non- voluntary licenses, namely, (a) compulsory license, dealt with in Sections 31 and 31A of the Act; and (b) Statutory licenses such as dealt with in Section 52(1)(j) of the Act. For the present case, we are not concerned with the first category of licenses. He submitted that the only ingredients

to be satisfied to attract Section 52(1)(j) of the Act are :

1. That there is a literary, dramatic or musical work from which a person desires to make sound recordings;

2. sound recordings in respect of such works have been previously made with the consent of the copyright owner;

3. The person making sound recordings has given a prescribed notice and paid the prescribed royalty at the rate fixed by the Copyright Board.

6. His contention is that the first condition of Section 52(1)(j) of the Act must be 'with the consent of the owner' whereas the owner's consent is not a pre-requisite for the sound recording. Moreover, a combined reading of clause (iii) of the proviso to Section 52(1)(j) with Section 52(1)(j)(i) of the Act makes it further clear that the consent requirement is only for the first recording. He submitted that a statutory license of the nature contemplated under Section 52(1)(j) of the Act is considered to be in public interest and is recognised in most of the countries in the world and is resorted to as the appropriate form of licensing. Inasmuch as respondent No.1 has satisfied the requirements of Section 52(1)(j) of the Act and Rule 21 of the Rules, it has not violated the literary and musical works embodied in the sound recordings. On the question whether the making of version recordings by respondent No.1 amounts to an infringement of the appellant's sound recording copyright, it was submitted that respondent No.1 has merely produced a version recording which is a fresh recording using a different set of performers, musicians and artists in a studio of their own and producing a record entirely different from the original recording. Thus, it is submitted that it is important to bear in mind that a copyright in a sound recording cannot be infringed by the making of a 'sound alike' recording. A close imitation of an existing recording using alternate performers is not a copyright infringement. Further, it is submitted that Section 2(m) of the Act clearly states that in respect of a literary, dramatic or musical work, it is a reproduction with amounts to an infringement while in the case of a cinematographic film, it is a copy of the film embodying the recording in any part of the sound track associated with the film. Similarly, in the case of a record, it is only such record which embodies the same recording. Thus the use of the words "records embodying the record" or the "record embodying the same record" clearly mean that it is only when the same signal has been kept, would there be a violation. If another signal is created, such as in the case of version recording, it is not an infringing copy within the meaning of Section 2(m). On this basis, it was submitted that respondent No.1 had satisfied the requirements of Section 52(1)(j) of the Act which is a defense to infringement of copyright.

7. Whatever may have been the case pleaded and argued on behalf of respondent No.1 before the Trial Court or before the High Court, the case now pleaded and argued centres round certain submissions such as that sound recordings in respect of the musical cassettes in question have been previously made with the consent of the copyright owner; that in case of musical record, it is only such record which embodies sound recording which

amounts to infringement, but if another signal is created such as in the case of version recording it is not an infringement.

8. We have set out the facts alleged in the plaint and there is no support to these aspects of the matter. To attract the provisions of Section 52(1)(j) of the Act or to fall outside the scope of Section 2(m) of the Act it is necessary to plead and establish these aspects of the case as contended for respondent No.1. Before we examine the tenability of the contentions raised, we think it necessary that the parties shall lay factual foundation in the pleadings. If, as contended for respondent No.1, these aspects bring out the true controversy between the parties and there are no pleadings to that effect in either form or content, to proceed to grant any temporary injunction or to decide the matter will be hazardous. Therefore, we set aside the order made by the High Court affirming the order of the Trial Court granting temporary injunction. It is open to the parties to raise appropriate pleadings by amendments or otherwise. We also make it clear that it is open to the parties to seek appropriate interim orders after amendment of pleadings.

9. We may also notice that the appellant filed a suit in Civil Suit No.265/98 in the High Court of Calcutta and a temporary injunction has been granted by the High Court. It would be in the fitness of things that these two suits [in O.S.No.4792/98 on the file of Addl.City Civil Court, Bangalore and the Civil Suit No.265/98 on the file of the High Court of Calcutta] should be tried together. We, therefore, direct the transfer of the said suit pending in the High Court of Calcutta to the Addl.City Civil Court, Bangalore.

10. In the interests of the parties, we direct that the two suits shall be tried and disposed of within a period of six months from today by the Trial Court.

11. The appeal is disposed of in terms of the aforesaid directions. No costs.