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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 814/2023**

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

Through: Mr. Chander M. Lall, Sr. Advocate with Mr. Ankur Sangal, Ms. Sucheta Roy, Mr. Raghu Vinayak Sinha, Mr. Shaurya Pandey and Ms. Yashi Aggarwal, Advs

versus

**CORNERSTONE SPORT AND ENTERTAINMENT PRIVATE LIMITED & ORS. Defendants**

Through: Mr. Pawan Bindra, Sr. Advocate with Mr. Rahul Dhawan and Ms. Vaishali Singh, Advs. for Defendants 1 to 3  
Mr. Sahil Solanki, Adv. for Defendant 4

**CORAM:  
HON'BLE MR. JUSTICE C.HARI SHANKAR**

% **ORDER**  
**10.11.2023**

**CS(COMM) 814/2023**

1. The issue in controversy in this suit as well as other connected suits i.e. CS (Comm) 811/2023, CS (Comm) 812/2023 and CS (Comm) 813/2023 is the same. The defendants in this suit are represented. Mr. Bindra, learned Senior Counsel appears for Defendants 1 to 3. Defendant 4 has been impleaded as ONE8 COMMUNE, Worldmark-2, 8, Aerocity, New Delhi – 110037. Mr. Sibal, learned Senior Counsel for the plaintiff in CS (Comm) 813/2023 submits that Defendant 4 was thus impleaded in view of the

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advertisement which figures at page 219 of the documents which reflected the mark ONE8 COMMUNE, and purported to be owned by Defendant 1.

2. Mr. Sahil Solanki, learned Counsel appears on behalf of Defendant 4 in this suit i.e. CS (Comm) 814/2023 and submits that Defendant 4 is actually Café which operates under the name of ONE8 COMMUNE, but is owned by True Palate Café Pvt Ltd. The learned Counsel for the plaintiff undertakes to file an amended memo of parties properly impleading Defendant 4.

3. In all these matters, the grievance of the plaintiff is that song and other recordings, in which the plaintiff holds copyright, are being played in the outlets of the defendants without obtaining a license from the plaintiff. The documents evidencing the copyright held by the plaintiff in the said records have been placed on record.

4. Mr. Sahil Solanki, learned Counsel for Defendant 4 in this suit undertakes that he would not play any of the copyrighted recordings forming subject matter of the present suit, in which the plaintiff holds copyright without obtaining a license from the plaintiff prior thereto. The statement is taken on record and they shall remain bound by the said statement.

5. The plaintiff claims that the repertoire of the recordings in which the plaintiff holds copyright is available on its website <https://www.pplindia.org/songs>. The plaint also provides the tariffs at which the plaintiff permits playing of the said recordings, which is



dependent on the area over which recordings would be played. The tariffs read thus:

<b>Transnational Brands Stores</b>	
<b>Area</b>	<b>Annual Fee/Per Outlet (₹)</b>
Up to 200 Sq. Ft	₹ 10,500
201 – 500 Sq. Ft.	₹ 10,500 Plus Rs 21 per sq. ft. p.a for every sq. ft. more than 200 Sq. Ft.
501 – 1000 Sq. Ft.	₹ 16,800 Plus Rs 17 per sq. ft. p.a for every sq. ft. more than 500 Sq. Ft.
1001 – 5000 Sq. Ft.	₹ 25,300 Plus Rs 15 per sq. ft. p.a for every sq. ft. more than 1000 Sq. Ft.
More than 5000 Sq. Ft.	₹ 85,300 Plus Rs 13 per sq. ft. p.a for every sq. ft. more than 5000 Sq. Ft.

6. The plaintiff avers that the plaintiff has addressed notices to the defendants, calling upon them to desist from playing of the copyrighted recordings of the plaintiff without obtaining a license from the plaintiff. However, despite the notices, the defendants continued to play the copyrighted recordings. In some cases, these recordings have been played for merely two years as on date.

7. In such circumstances, Mr. Sibal, learned Senior Counsel for the plaintiff in one of the connected suits i.e. CS (Comm) 813/2023, submits that there would be no purpose in relegating the plaintiff to the exercise of pre-institution mediation either.

8. This is not a first instance when such a dispute has come up before this Court, a batch of suits had earlier, come up before this Bench. The said suits were taken up and the prayer for interim injunction was disposed of by order dated 20 October 2023, restraining the defendants from playing the copyrighted recordings of the plaintiff without obtaining a license from the plaintiff.



9. The learned Senior Counsel for the plaintiff has pointed out that this Court has already held in its judgment in CS (Comm) 671/2021 (*Phonographic Performance Limited v. Canvas Communication*) that, before playing recordings in which the plaintiff holds copyright, any third party would necessarily have to obtain a license from the plaintiff and the requirement of the plaintiff being a copyright society would not apply in such case.

10. The position in law is *prima facie* clear. The plaintiff being the owner of copyright in the recordings, which form the part of its repertoire and which find place on the website <https://www.pplindia.org/songs>, it would not be permissible to anyone to play the said recordings without obtaining a prior license from the plaintiff, especially where the recordings are being played for commercial benefit.

11. In view thereof, let the plaint be registered as a suit. Issue summons in the suit. Summons are accepted on behalf of Defendants 1 to 3 by Ms. Vaishali Singh and on behalf of Defendant 4 by Mr. Sahil Solanki in this suit.

12. Written statement, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendants within 30 days thereof.



13. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of documents and marking of exhibits on 15 January 2024, whereafter the matter would be placed before the Court for case management hearing and further proceedings.

**I.A. 22375/2023 (Order XXXIX Rules 1 and 2 of the CPC)**

14. Inasmuch as the allegations in this plaint are of violation of the plaintiff's copyright, by the exploitation, by the defendants, of recordings in which copyright is held by the plaintiff without obtaining a license in that regard, and as the exercise of such infringement in copyright has been continuing for some time, a clear *prima facie* case for grant of interlocutory injunction is made out. Failure to grant such injunction is bound to result in continued infringement of copyright. Accordingly, the principles of balance of convenience and irreparable loss would also justify grant of interim injunction as sought.

15. As such, issue notice, returnable before the Court on 7 February 2024.

16. Notice is accepted on behalf of Defendants 1 to 3 by Ms. Vaishali Singh and on behalf of Defendant 4 by Mr. Sahil Solanki.

17. Till the next date of hearing, the defendants as well as all other acting on their behalf shall stand restrained from playing any of the recordings forming subject matter of the plaintiff's copyright and figuring on the website <https://www.pplindia.org/songs>, without



obtaining a prior license from the plaintiff.

**I.A. 22376/2023 (Section 12A of the Commercial Courts Act, 2015)**

**18.** The allegation against the defendants is of continued infringement of the plaintiff's copyright by exploiting recordings in which such copyright is held, without obtaining a license from the plaintiff. Unlike cases of infringement of trade mark, copyright held in music recordings is infringed by playing such recordings in closed spaces, so that it would not normally be possible for the plaintiff to acquire knowledge of such infringement, unless it is brought to its notice. Notably, in some cases, such infringement has continued by almost two years as on date.

**19.** As such, relegating the plaintiff to the remedy of pre-litigation mediation, in my view, would serve no purpose. Clearly, the plaintiff is entitled to urgent reliefs as sought in the plaints, in order to ensure that continued infringement of copyright does not take place. A clear case for exemption from pre-litigation mediation under Section 12A of the Commercial Courts Act, 2015 is, therefore, made out.

**20.** The application is allowed.

**I.A. 22377/2023 (Order XI Rule 1(4) of the CPC)**

**21.** This application seeks permission to file additional documents. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the CPC as amended by the Commercial Courts Act within four weeks from today.



22. The application stands disposed of accordingly.

**I.A. 22378/2023 (Section 149 of the CPC)**

23. The plaintiff is permitted to make the deficient court fee, if any, good within two weeks from today.

24. The application is allowed.

**I.A. 22379/2023 (Exemption)**

25. Subject to the plaintiff filing legible copies of any dim or illegible documents within 30 days, exemption is granted for the present.

26. The application is disposed of.

**I.A. 22380/2023 (Permission to file a CD)**

27. Permission to file compact disc/pen drive is granted, subject to provide a copy thereof to the opposite sides.

28. The application is disposed of.

**C.HARI SHANKAR, J**

**NOVEMBER 10, 2023**

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*Click here to check corrigendum, if any*