NC: 2024:KHC:14440
CRP No. 487 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE C M JOSHI

CIVIL REVISION PETITION NO. 487 OF 2023 (IPR)

BETWEEN:

SAAVN MEDIA LTD.,
BRAND OWNER OF "JIOSAAVN",
A WING, 19TH FLOOR, ONE BKC,
G BLOCK, BKC BANDRA (EAST),
MUMBAI - 400 051.
REP. BY ITS AUTHORIZED REPRESENTATIVE
SMT. OINDRILLA MAITRA,
EMAIL oindrila@saavn.com

...PETITIONER

(BY SRI RICAB CHAND K & SRI ABHISHEK MALHOTRA, ADVOCATES)

AND:

1 . SRI HAMSALEKHA,
S/O GOVIND RAJU,
AGED ABOUT 70 YEARS,
R/O 1092/93, 10TH C CROSS,
11TH MAIN ROAD, 2ND STAGE,
MAHALAKSHMIPURAM,
BANGALORE - 560 086.

REP. BY ITS POA HOLDER,
SMT. TEJASWINI.N,
D/O NAGARAJ R,
R/O G.R. SHARADA NILAYA,
#749, 4TH B MAIN, 2ND CROSS,
ASHRAMA ROAD, LAGGERE.
BANGALORE - 560058.

Digitally signed by NANDINI R
Location: High Court of Karnataka

2 . M/S MARS FILMS PRIVATE LIMITED,
BRAND OWNER "JHANKAR MUSIC"
NO 53/A, GROUND FLOOR, KHADHI COMMISSION
HBCS, VIVEKANANDANAGAR,
KATARIGUPPE MAIN ROAD,
BANGALORE - 560 085
REPRESENTED BY ITS PARTNER
BHARATH KUMAR JAIN
EMAIL marsfilms03@gmail.com
PREVIOUSLY KNOWN AS
"MARS RECORDING PVT LTD."

3 . AIRTEL DIGITAL LIMITED,
BRAND OWNER OF "WYNK MUSIC",
BHARTI CRESCENT, 1, NELSON
MANDELA ROAD, VASANT KUNJ
PHASE - II, NEW DELHI - 110070.
REP. BY ITS DIRECTOR
EMAIL: corporate.secretarial@bharti.in

4 . HUNGAMA DIGITAL MEDIA
ENTERTAINMENT PRIVATE LIMITED,
R/O SF-B- 07, ART GUILD HOUSE,
PHOENIX MARKET CITY, LBS MARG,
KURLA (W), MUMBAI - 400070.
REP. BY ITS DIRECTOR,
EMAIL: companysecretary@hungama .com

5 . GAMMA GAANA LIMITED,
R/O EXPRESS BUILDING,
9-10 BAHADURSHAH ZAFAR MARG,
NEW DELHI - 110 002.
REP. BY ITS DIRECTOR
EMAIL: cs@timesinternet.in

…RESPONDENTS

(BY MISS AKSHATHA M PATEL, ADVOCATE FOR R1;
MISS LEKHA.G.D, ADVOCATE FOR R2;
SRI VENKATA RANHAYAN, ADVOCATE FOR R3;
SRI K.J KAMATH, ADVOCATE FOR R4;
SMT. SHILPA.G, ADVOCATE FOR R5)

THIS CRP IS FILED UNDER SEC.115 OF CPC., AGAINST THE ORDER DATED 22.05.2023 PASSED ON IA 7 IN OS NO.4967/2021 ON THE FILE OF XVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU DISMISSING THE IA NO.7 FIELD UNDER ORDER VII RULE 11 OF CPC, FOR REJECTION OF PLAINT.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 08.02.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Aggrieved by the order dated 22.5.2023 passed on IA No.7 in OS No.4967/2021 by the learned XVIII Additional City Civil and Sessions Judge, Bengaluru, dismissing IA No.7 filed under order VII Rule 11 of CPC, for rejection of plaint, defendant No.3 is before this Court in this petition.

2. The parties would be referred to as per their rankings before the trial Court for the sake of convenience.

3. The factual matrix of the case is as below:

(a) The plaintiff claiming that he is a renowned Indian Song Writer and a Music Composer had an illustrious career and had composed and written musical works for more than 300 films. He was

awarded several awards by various institutions – Government and non Governmental. He is the original Lyricist and Musical Composer of several musical works included in cinematographic films. The defendants in their channels have admitted that he is the author, composer and lyricist of the songs, albums etc. It is stated that the plaintiff is a member of Indian Performing Rights Society (IPRS) since 1988 and has been collecting royalty distributed by the Society and he has not received no other royalty for any other form of exploitation of 'the Work', independent to the Cinematographic films. He contended that plaintiff being member of IPRS, was under the assumption that IPRS is collecting the Royalty on his behalf.

(b) It is stated that the plaintiff recently came to know that defendant No.1 is commercially exploiting the work through its label. The royalty of these proceeds has been withheld from the plaintiff. It is

contended that the plaintiff has not assigned or waived the right to receive consideration and or royalties to be shared on equal basis with the assignee of copy right for utilization of such work in any form other than for the communication to the public along with cinematographic film in a Cinema Hall. The plaintiff allege that defendant Nos. 2 to 5 are making available the work independent to cinema continuously for internet streaming but however, are not part of IPRS allowing it to be able to collect and rightfully distribute the pending royalties to the plaintiff. Defendant Nos. 2 to 5 have failed to provide due and proper name credits to the plaintiff and they have suppressed licences/royalties collected by them and failed to protect the authorship right and share economic benefit to the plaintiff. It is alleged that defendant No.1 apart from having agreements with defendant Nos.2 to 5, has been entering into various agreements locally which are beyond the capacity of IPRS society, thereby the

statutory rights of the plaintiff are being violated. The plaintiff contends that the cause of action arose for the suit on 06-02-2021 when the plaintiff came to know about the violations and issued legal notices and such cause of action is continuous and recurring in nature. With these contentions, the plaintiff prayed for following reliefs:

> "a. Directing the defendants by themselves, their representatives, agents, servants, partners, licencee's, assignee's, subsidiaries or anyone acting on their behalf and in active concert or participation with them or any of them to display the due name credits of 'Sri Hamsalekha'/plaintiff in each category of contribution i.e., lyrics and musical composition while exhibiting, releasing, transmitting, displaying and /or communicating in any form to the public anywhere in the World as per Schedule A;
>
> b. Directing the defendants to render honestly and faithfully true account of the considerations and or profit/royalties that defendants have derived by commercially communicating the work in Schedule A to the

public and directing payment of such consideration and or profit/royalties in equal share to the plaintiff along with an interest of 12% per annum on awarded amount calculated from the date of filing this suit till the date of payment;

c. Directing the defendants to maintain statements of royalties with respect to Schedule A and accordingly distribute the equal share of consideration and /or royalties to the plaintiff henceforth on a quarterly basis;

d. Directing the defendants to pay damages of Rs.10,000/- per month calculated from the date of filing this suit for moral and economic violation of plaintiff's copyright;

e. Directing the defendants to pay the plaintiff the costs of this suit and pass such other orders as this hon'ble Court deems fit and proper in the circumstances of the case;and

f. The plaintiff undertakes to pay differences in court fee if any at the time of final decree and judgment;"

4. After receiving summons, defendant No.3(the revision petitioner herein), appeared and filed an

application in IA No.7/2023 before the trial Court under Order VII Rule 11 CPC, seeking rejection of the plaint.

5. The affidavit filed in support of the application contend that the plaintiff lack *locus standi* and has not disclosed the cause of action. It is the case of the applicant in the said IA that, the plaintiff being Member of IPRS has assigned all his rights to IPRS and therefore, the plaintiff cannot maintain the present suit. It was contended that being Member of the IPRS and in view of exclusive Agreement of Rights in favour of IPRS by way of Assignment Agreements, the plaintiff do not have any residual rights to agitate the present suit. Therefore, the plaintiff lacks *locus standi* to file and maintain the present suit. It was contended that the claim for royalties is contrary to the provisions of the Copyright Act, 1957 and such claims are barred by provisions of Section 16 of the Act as the plaintiff has no further rights under the said Act, after the Assignment of Rights to the IPRS. It is contended that the plaintiff is an Author by virtue of being a Music

Composer and he is neither the owner of the works in question nor the copy rights assigned as defined under Section 33(1) of the Act. Therefore, the plaintiff being the Member of the IPRS Society with which he had executed Assignment Agreements and therefore, the plaintiff cannot maintain the suit.

6. The second contention of defendant No.3 was that the plaintiff has no cause of action in view of the settled legal position regarding the utilization of the sound recordings. It is contended that the Apex Court in the case of **IPRS Vs. Eastern Indian Motions Pictures Association and others**,[1] has held that *"when a song is composed and Lyrics written upon the composer- lyricist being commissioned to do so by a Film Producer, then when the sound recording of such song is communicated to the public, the Author of the composition and the Lyricist are not entitled to claim any independent licence fee or royalty"*.

[1] AIR 1997 SC 1492,

7. It is contended that the rights of the authors of the underlying literacy and musical works are subsumed in the derivative sound recording which is an independent copyrighted work under the ownership of producer in the cinematographic field. Therefore, the rights of sound recording as mentioned in Section 14(e) of the Act can only be enjoyed by the owner of the sound recording without any interference from the authors of underlying works, namely, literary works and the musical works. Therefore, it is contended that the plaintiff has not shown any cause of action to maintain the suit.

8. The third contention raised by defendant No.3/applicant is that, the suit is liable to be rejected owing to undervaluation. It is contended that the plaintiff has undervalued the suit to file it before the trial Court instead of filing the same before the Commercial Court which ordinarily had the jurisdiction. It is contended that the disputes relating to the copyrights falling under the category of commercial dispute and therefore, the plaintiff

has to disclose the specified value under the Commercial Courts Act, which he has not done and therefore, there is a gross under valuation of the suit. In this regard, the applicant has heavily relied upon the provisions of the provisions of Commercial Courts Act and contended that the present suit is not maintainable.

9. The said application was opposed by the plaintiff before the trial Court. The said application was heard by the trial Court along with the similar application filed by the other defendants and passed the order and the applications came to be dismissed by order dated 22-05-2023. Being aggrieved by the said order, defendant No.3 is before this Court in revision.

10. On issuance of notice, the plaintiff and other respondents have appeared before this Court through their counsel.

11. The arguments by learned counsel appearing for the revision petitioner/defendant No.3 and the learned

counsel for respondent No.1/plaintiff and other respondents were heard.

12. The only point that would arise for consideration is,

> "Whether the revision petitioner/defendant No.3 has made out any grounds envisaged under Order VII Rule 11 of CPC for rejection of the plaint?"

13. The learned counsel appearing for the revision petitioner/defendant No.3 submitted that the jurisdiction of the present suit was the Commercial Court. He submits that Section 2(1)(c) of the Commercial Courts Act, defines that *"an IPR matter would be falling within the scope of Commercial Courts Act and the plaintiff has to mention the specified value in the plaint"*. It is contended that the plaintiff has claimed under prayer 'B' and 'D' that, he is entitled for a sum of Rs.10,000/- per month from the date of suit and also that the accounts of the defendants concerning the earnings made in violation of the Copyright Act, be paid to him. Therefore, the plaintiff should have specified the value as required under Law. It is submitted

that, in all probability, the said specified value was more than Rs.3,00,000/- and therefore, the plaintiff should have filed the suit before the Commercial Court, but not before the Regular Court and as such, the plaint is liable to be rejected under Order VII Rule 11 of the CPC. He submits that, in the impugned order, the documents of revision petitioner were not considered and the arguments of defendant No.1 alone was considered and therefore, the impugned order overlooks the submission made by the revision petitioner.

14. The second contention of the plaintiff that, defendant No.3 is not paying royalty to the IPRS. If that is the contention, the plaintiff should have sued the IPRS and therefore, the plaintiff could not have maintained the present suit only against these defendants. The plaintiff had entered into the Assignment Agreement with IPRS and therefore, it was the IPRS which was liable to pay the royalty, if any, to the plaintiff. Therefore, he contends that the provisions of the Copyright Act, make it clear that

when the rights are assigned to IPRS, it is only the IPRS which would be liable. Therefore, he submits that a direction be issued to file the suit before the Commercial Court and to restrict the claims of the plaintiff.

15. The learned counsel appearing for respondent Nos. 2 and 4 would submit that, under Section 57 of the Copyright Act, the remedy is available only for the exploitation of work etc., for the copyrighted work and only for such violations, the suit may be filed. Therefore, none of the reliefs claimed by the plaintiff survives under Section 55 of the Act. He has taken the Court through the provisions of Sections 38 and 33 of the Copyright Act, and has contended that the plaintiff has not made out any case and therefore, the impugned order passed by the trial Court is incorrect. In other words, he has reiterated the contentions taken up by defendant No.3/revision petitioner.

16. The learned counsel for respondent No.5 has

also supported the arguments of the learned counsel for the revision petitioner.

17. The learned counsel for respondent No.1/plaintiff contends that the proviso to Section 18(1) of the Copyright Act, show that only collection and distribution is assigned to IPRS but not right to sue. Therefore, the plaintiff has *locus standi* and the assignment cannot be contrary to Section 18(1) of the Copyright Act. It is submitted that proviso to Section 33(1) of the Copyright Act, lays down that *"the rights are with the plaintiff and such rights are consistent with the obligation to the society"*. Only after bringing the books of accounts etc., the Court fee can be computed and therefore, the contention that the valuation of the suit is not proper and correct cannot hold any water. He has submitted that the provisions of Order XVIII Rule 20 of CPC has to be invoked by the trial Court, once the rights are determined and therefore, the plaint cannot be rejected on that count. It is further submitted that the

cause of action has been disclosed by the plaintiff in para 23 of the plaint and the plaintiff being Lyricist and Composer and his name was not properly disclosed while the copyrighted work was being displayed/communicated to the public. Therefore, there was a cause of action for the plaintiff and therefore, the suit is maintainable. It is submitted that Section 12 of the Commercial Courts Act is clear in this regard and therefore, the revision is liable to be rejected.

18. The contention of the revision petitioner is that the suit is not maintainable in view of the bar contained in Order VII Rule 11 of CPC. It is his contention that, the plaintiff has no *locus standi* to file the suit and also that the claim of the plaintiff is barred. For better understanding of the provisions of Order VII Rule 11 of CPC, the same is reproduced below:

> **"11. Rejection of plaint**.— The plaint shall be rejected in the following cases:—
>
> (a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) xxx xxx xxx

(f) xxx xxx xxx

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]

19. The Clause (a) of Rule 11 is in respect of not disclosing about the cause of action. In a case on hand, para 23 of the plaint states as below:

> "23. **CAUSE OF ACTION:** The cause of action arose to this suit on 06-02-2021 when the plaintiff came to know about the said violations and issued legal notices and the cause of action is continuous and recurring in nature. The cause of action for the present suit arises each day the defendants continues to commercially exploit the plaintiffs' work."

20. Thus, it is evident that the plaintiff discloses the cause of action. We are not entering into the question *whether it is a proper cause of action or not*? So also, the correctness or otherwise of the 'cause of action' contended by the plaintiff cannot be gone into at this juncture, when the initial bar is raised by defendant No.3/revision petitioner. *Prima facie,* plaintiff has disclosed the cause of action and whether the said cause of action is related to the prayer made in the plaint can only be ascertained at the time of trial. Therefore, the plaint cannot be rejected on the ground that it does not discloses the cause of action.

21. The second Clause (b) of Rule 11 is regarding valuation. It is pertinent to note that defendant No.3 who is the revision petitioner herein contends that, the plaintiff has not disclosed the proper valuation of the suit. It is his contention that the plaintiff should have shown the correct valuation. It is his contention that the valuation of the suit as per the Karnataka Court Fee and Suit Valuation Act is not proper and also that the suit being a commercial dispute, the plaintiff should have disclosed the specified value as defined under the provisions of the Commercial Courts Act. Therefore, the revision petitioner contends that the plaintiff do not disclose the correct valuation and the suit should have been filed before the Commercial Courts under the provisions of the Commercial Courts Act and therefore, the plaint is liable to be rejected.

22. It is worth to note that filing of the suit in the Court which does not have jurisdiction does not attract the provisions of Order VII Rule 11 of CPC. In fact, Rule 10 of Order VII speaks of *'Return of the plaint'* when the plaint is

filed in a Court which does not have the jurisdiction. Therefore, filing of the suit in a Court having no jurisdiction cannot be a ground to invoke the provisions of Order VII Rule 11 of CPC. Hence, defendant No.3 under the guise of improper valuation of suit or not mentioning the specified value (under CCA) cannot seek that the suit of the plaintiff is barred for non filing the same in the Commercial Court.

23. It is worth to note that para 24 of the plaint mention about the jurisdiction. The plaint states that by virtue of Section 20 of CPC and Sections 55, 56, 57 of the Copyright Act, the City Civil Court, Bangalore, has the jurisdiction to try the suit.

24. It is worth to note that the question of valuation was not raised before the trial Court. In fact, the prayer made by defendant No.3/revision petitioner is on three grounds as noted supra. The plaintiff states in the plaint in para 25 that, *"the plaintiff values the relief sought for in the suit and an ad-valorem as per the valuation slip and a*

Court fee of Rs.325/- has been paid". The breakup of the court fee paid is not available at this juncture. Obviously, the trial Court has not found any fault with the valuation of the suit. Moreover, the question of valuation and court fee has not been raised by defendant No.3 and the learned counsel appearing for the plaintiff has stated that the provisions of Order XX Rule 18 can be invoked and decree can be drawn by the trial Court after the court fee is paid. Therefore, the valuation of the suit cannot be faulted with. Moreover, where the relief is undervalued and the plaintiff is required to pay the Court the correct court fee within the time fixed by the Court, if he fails to do so, then only, the plaint is liable to be rejected. Evidently, the question of court fee and valuation is not raised before the trial Court. It was the contention of defendant No.3 that the valuation is not properly done and therefore, the plaint is liable to be rejected.

25. It is pertinent to note that the plaintiff has called for the accounts. Prayer-B states that *'the*

defendants are to be directed to render the true account of the considerations or profits/royalties that the defendants have derived by commercially communicating the work as per schedule –A to the public and that they may be directed to pay the same along with the interest." Therefore, when the plaintiff has made the valuation nominal, no fault can be found with the same. The valuation has to be determined only if the plaintiff establish that he is entitled to seek the account of the profit earned by the defendants. Akin to suit for accounts in a partnership, the entitlement of the plaintiff to seek accounts has to be determined and only if he succeeds then the question of valuation and payment of the adequate court fee is come into picture. Hence, the provisions of Rule 11 (b) cannot be applied to the case on hand.

26. Further the judgment in the case of **Vishal Pipes Ltd Vs Bhavya Pipe Industry**[2] by Delhi High

[2] MANU/DE/2079/2022

Court cannot be made applicable since it does not consider the remedy available under Order 7 rule 10 of CPC. Moreover, the question whether the Courts are empowered to determine the Specified Value (u/s 12 of CCA) even if it is not done by the plaintiff, is not considered.

27. Clause (d) of Rule 11 states that when the suit appears from the statements made in the plaint that the suit is barred by any law, then the plaint may be rejected. In fact, the contentions of revision petitioner were on this aspect of Rule 11.

28. It is the case of the revision petitioner that the plaintiff does not have the *locus standi* to maintain the suit since he has already assigned all his rights to the IPRS. Evidently, the assignment of rights to IPRS is not in dispute. The question is, *what are the rights that have been assigned by the plaintiff to IPRS?*

29. It is pertinent to note that, to ascertain *whether the plaintiff has assigned all his rights to the IPRS,* it is

necessary to enter into the question of fact by referring to the Assignment Deeds.

30. Chapter –VII Section 33 of the Copyright Act, 1957 deals with the Copyright Society. Section 33 (1) and (3) of the Act, reads as below:

> "33. Registration of Copyright society.— (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-Section (3):
>
> Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society;
>
> Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act;

Provided also that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) XXX XXX XXX

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

3[(3A) The registration granted to a copyright society under sub-section (3) shall be for a period

of five years and may be renewed from time to time before the end of every five years on a request in the prescribed form and the Central Government may renew the registration after considering the report of Registrar of Copyrights on the working of the copyright society under section 36:

Provided that the renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty:

Provided further that every copyright society already registered before the coming into force of the Copyright (Amendment) Act, 2012 (27 of 2012) shall get itself registered under this Chapter within a period of one year from the date of commencement of the Copyright (Amendment) Act, 2012.]"

31. It is pertinent to note that, a plain reading of the proviso to Section 33 shows that "*the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph*

films or sound records shall be carried out only through a copyright Society duly registered under this Act".

32. It is also pertinent to note that, Section 57 of the Copyright Act, 1957, deals with the Author's Special Right which reads as below:

> "**57. Author's special rights.**— 1[(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—
>
> (a) to claim authorship of the work; and
>
> (b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work 2[***] if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:
>
> Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.
>
> Explanation.— Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.]

> (2) The right conferred upon an author of a work by sub-section (1), 3[***], may be exercised by the legal representatives of the author."

33. Thus, it is evident from the plain reading of Section 57 that the Author will have the right to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work. Section 57 (1)(a) permits him to claim authorship of the work.

34. It is also relevant to note that the combined reading of Sections 33 and 57 of the Copyright Act, 1957, will make it clear that the assignment to the IPRS is inclusive of any such right to claim royalty. But the author has the right to claim name credit by invoking author's right.

35. It is pertinent to note that the Section 33 bars any person or association of persons carrying on the business of issuing or granting licences. In the case on hand, the plaintiff is not doing the business of issuing or

granting licences. He is the author and therefore, his rights are protected under Section 57 of the Act. Hence, Section 33 cannot act as a bar for the plaintiff to institute the suit.

36. It is the specific contention of the revision petitioner that, the suit is barred under Section 33 (1) and 33(3) of the Copyright Act. The plain reading of Section 33(1) and 33(3) do not show the suit is barred. What is barred is that to carry on issuing or granting licences. It does not bar the individuals like authors from filing any claim. Therefore, it cannot be said that the provisions of the Act bar the filing of the present suit.

37. The second contention is that, the decision of the Apex Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others,** referred supra, lays down that, *"when a song is composed and lyrics written upon the composer- lyricist being commissioned to do so by a film producer, the author of the composition and lyricist are not entitled to claim any independent licence fee or royalty*

when sound recording of such song is communicated to the public."

38. It is pertinent to note that, the plaintiff when claims name credit, that cannot be deemed to have been barred. Obviously, the said decision of the Apex Court is prior to coming into force of the Amendment to the provisions of the Copyright Act. Therefore, the name credit or the authorship of the plaintiff cannot be claimed to have been restricted by virtue of the said judgment. What is stated in the judgment of **IPRS VS. Eastern Indian Motions Picture Association and others** referred supra is that, *"when the artistic work is an amalgamation of several independent works, any individual rights cannot be claimed".* Again, this aspect is to be determined on the basis of the evidence that may be led before the Court. Therefore, it cannot be said that each and every musical rendition or recording is hit by the judgment of the Apex Court in the above case.

39. The next contention of the learned counsel for the revision petitioner is that, the impugned order does not consider the fact that 2012 amendment is only clarificatory in nature. In this regard, he relies on the judgment in the case of **IPRS Vs. Entertainment Network (India) Limited**[3], wherein, in para 31, it is stated as below:

> "31. The 2012 amendment does not alter the provisions of the Act, on interpretation whereof in the judgments aforesaid it was held that communication to the public of underlying literary and musical works as part of sound recording, under authorisation/licence from owner of the copyright in the sound recording, does not require authorisation/permission from the owner of the copyright in the underlying literary and musical works of the sound recording. Thus when Section 19(10) provides that assignment of copyright in any work to make a sound recording which does not form part of any cinematograph film shall not affect the right of the author of the work to claim equal share of royalties and consideration payable for any utilisation of such work in any form, it cannot mean that utilisation of the work as embodied in the sound recording also entitles the owner of the copyright

[3] CS (os)666/2006

in such work to demand equal share of royalties and consideration payable for the sound recording. To read the same otherwise would make the other provisions, on interpretation whereof it was held that no authorisation is required to be taken from owners of copyright in underlying works of the sound recording, while communicating the sound recording under authorisation of copyright in sound recording, otiose. Any interpretation which makes another provision of the statute redundant or otiose, is to be avoided and the rule of harmonious construction has to be applied. Thus Section 19(10) has to be read as not affecting the right of the author of the underlying works in sound recording, to claim share in royalty payable for utilisation of such works though identically as in the sound recording but in any other form, as had earlier also been held by the Single Judge in the judgment on interim relief in CS(OS) No.1996/2009. To the said extent, the amendment of the year 2012, is clarificatory. Moreover Section 19(10) provides for sound recordings which do not form part of any cinematograph film. The claim of IPRS in the plaint in both the suits is with respect to sound recordings forming part of cinematograph film. IPRS, in the plaint in CS(OS) No.1996/2009, in para 15 has expressly admitted that in India, film music makes up a major part of music industry and the music companies also source the rights from the film producers and effectively own all rights in the underlying works in the said film music also. I thus

conclude that the amendment of the Act of the year 2012, even if were to be applied, does not change the legal position as already enunciated in the judgments aforesaid."

40. It is evident from the above decision that, Section 19 (10) has to be read, as not affecting the right of the author of the underlying works in sound recording to claim share in royalty payable for utilization of such work though identically as in the sound recording in any other form. It is also relevant to note that the right of the author is not taken away and it is subject to Section 33 and 57 of the Copyright Act. If any right remains, like claiming the name credit, that is not affected by virtue of Section 33 or any other provisions of the Act.

41. The next contention is that, the revision petitioner has already procured licence from third party licensor to utilize sound recording in which plaintiff's work is subsumed and therefore, the plaintiff is barred under law from making any claim for royalty and licence fee in the underlying lyrics and composition. Therefore, he

contends that there is no cause of action that subsists in the present case. Again, these claims are to be sorted out only by way of evidence. Whether the rights are subsumed in the licence from the third party licensors or not in the 'Art Work' is a matter to be determined in a suit. At no stretch of imagination, it can be said that the provisions of the Act itself bars the filing of the suit of the present nature. It is also relevant to note that even if we assume that the plaintiff is barred from claiming any licence fee, royalty or such other monetory reliefs; the claim of the plaintiff, sofar as seeking name credit at the time of the communication to the public is very well maintainable. It is not known what are the terms of the assignment of the rights of the plaintiff to the IPRS. Obviously, the IPRS is not a party in the present suit. If at all contention is taken up by the defendants that IPRS is also necessary party to the suit, the same is to be considered by the trial Court by way of Preliminary Issue. Therefore, the above contention of the revision petitioner is not sustainable in law.

42. The next contention as stated supra is regarding the valuation of the suit. As stated above, the valuation of the suit cannot be objected since the petitioner has not raised the contention of the valuation of the suits before the trial Court. The valuation is also the mixed question of law and fact. Therefore, if the trial Court comes to the conclusion that the valuation of the suit is not proper, it may direct the plaintiff to pay the necessary Court fee and then only, it would proceed to pass decree. Therefore, this ground is not available. The valuation of the suit has to be on the bases of the averments of the plaint and nothing else. This view is fortified by the judgment of the Apex Court in the case of **Bharat Bhushan Gupta Vs Pratap Narain Varma and another**[4].

43. As noted above, the question whether the suit has to be treated as a Commercial Suit or not is not of much importance. Though it is a fact that under Section

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2(c) of the Commercial Courts Act, the intellectual property matters and company disputes are also to be termed as the Commercial disputes, it is clarified by the provisions of Section 12 of the Commercial Courts Act. If at all, the plaintiff wants to file the suit as a Commercial Suit, then the specified value of the suit has to be mentioned. In the case on hand, the plaintiff has not claimed that the suit is to be treated as a Commercial Suit. Therefore, defendant No.3/revision petitioner herein cannot force the plaintiff to incorporate of the specified value in the plaint and then claim that the suit should have been filed before the Commercial Court and on that count, he cannot contend that the suit is not maintainable. If at all the trial Court finds that, it is a commercial dispute, then it is at liberty to return the plaint to file the same in the proper jurisdictional Court. Hence, this Court does not find any merit in the revision.

44. Though the order passed by the trial Court is short and does not address all the points raised by the

revision petitioner, no fault can be found in respect of the conclusions reached by the trial Court. Hence, the revision petition is bereft of any merits. For aforesaid reasons, the point raised by this Court is answered in the negative. Hence the following:

ORDER

The Civil Revision Petition is dismissed.

Sd/-
JUDGE

tsn*
List No.: 1 Sl No.: 20