

Charan Kaur Vs. Merchant Records

**IN THE COURT OF SHRI SUMIT BHALLA, PCS
CIVIL JUDGE (SR. DIVISION), MANSA**

*Civil Suit No.CS/629/2022
Date of Order: 17.11.2022*

Charan Kaur & Anr.

----- Plaintiffs/Applicants

Versus

Merchant Records Pvt. Ltd. & Ors.

----- Defendants/Respondents

APPLICATION UNDER ORDER 39 RULES 1 & 2 CPC
Suit for permanent injunction

Present: Mr. Babu Singh Mann, Advocate for Mr. Amit Jhanji, Sr. Advocate, for plaintiffs
Mr. Satish K. Singla & Mr. M.S. Sawhney, Advocates for defendants No.1 to 3
Mr. Harsimran Duggal and Ms. Janya Sirohi, Advocates for defendant No.4
Suit dismissed as withdrawn qua defendant No.5
Mr. Rakesh Raushan, Advocate for defendants No.6 & 7 (through Video Conferencing Facility from Delhi)
Mr. M.S. Sawhney, Advocate for defendant No.8
None for defendant No.9
Defendants No.10 and 11 Ex parte

ORDER

1. By way of this application, the plaintiffs are seeking ad-interim injunction, restraining the defendants from infringement of copyright of the song titled as *Jaandi Vaar* (hereinafter referred to as “the song”) sung by their son deceased Mr. Shubhdeep Singh Sidhu, popularly known as Sidhu Moosewala (hereinafter referred

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to as “*Deceased Singer*”).

2. Succinctly stated the brief facts of the case of the plaintiffs is that they are parents of the deceased singer, who was murdered on 29.05.2022 and was a singer. The deceased singer had written and sung numerous songs during his lifetime, shared through his official YouTube Channel, namely, *Sidhu Moose Wala*, which has over 16.5 million subscribers. The deceased singer had written and composed a song titled as *Jaandi Vaar* and as such, is the sole owner of the said song. On 25.08.2022, the plaintiff No.1 came to know through social media posts that the defendants No.1 to 3 are planning to release the said song on 02.09.2022, which features deceased singer and Ms. Afsana Khan. The defendants No.1 to 3 had no role to create, compose, writing and recording of the said song and was exclusive creation of the deceased singer. The defendants have published the release of the song in form of social media posts on their *Instagram* accounts, which is also published on the platform of defendant No.4. It is also uploaded by defendant No.9 on his YouTube Channel. The song was allegedly recorded at the studio of Mr. Sachin Ahuja at Chandigarh/Mohali, as claimed by defendants No.2 and 3. Said Sachin Ahuja or the defendants have no right, claim or any other interest in the said song or recording and the deceased singer was the sole creative and financial force behind the said song and is sole holder of the

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copyright of the said song. The plaintiffs have inherited the copyright of the deceased singer after his death, being his natural Legal heirs. There was no agreement, whosoever, entered into between the deceased singer and defendants No.2 and 3 with respect to the said song. The defendants No.2 and 3 have illegally obtained the recording of the said song and are now illegally proclaiming to have ownership rights in the said song. The defendants are advertising promotion of the said song through the music portal of defendant No.6 and 7 to the effect that public at large can become *owner* of the said song by purchasing an RPC card. The deceased singer never authorized any person to use his e-signatures or relinquished his copyright of the said song to any party. The defendants are using image of the deceased singer to sell merchandise and other artifacts to the public at large and thereby to cause irreparable loss to the plaintiffs. It is averred that the defendant No.1 is a music record label company and defendants No.2 and 3 are directors thereof. Defendant No.4 and 5 are multinational technology companies, specialized in digital music, podcast and video services offering access to millions of songs. Defendant No.6 is a company, being owner and operatives of defendant No.7 which is a digital platform which provides audience with an opportunity to invest in various music artists by providing them *non-fungible tokens* (NFT) that hold a percentage of

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streaming royalties. Through defendants No.6 and 7, the defendants No.1 to 3 are trying to monetize the death of deceased singer by using his images on merchandise articles and by selling the song in question. Defendant No.8 is an American Multinational entertainment and record label conglomerate, entered into Punjab Music industry and are responsible for distribution of music developed by defendants No.1 to 3. The defendant No.10 owns and operates *Instagram* application providing platform for sharing photos and videos, allowing the users to share the song with users of the application, released by defendants No.1 to 3. The defendant No.11 is John Doe, representing the anonymous and unidentified parties, who are indulged in illegally producing, composing, writing lyrics, publishing, printing and telecasting the said song. Hence, this application.

3. The application was contested by defendants No.1 to 3 by filing their joint written reply, raising the primary objection that the plaintiffs have not approached the Court with clean hands and have suppressed material facts. It is averred that the deceased singer was a member of Indian Performing Right Society (IPRS), a registered copyright society under the Copyright Act, 1957. The deceased singer assigned his copyright in literary and musical works in favour of IPRS by way of the assignment deed dated 04.09.2020 entered between deceased singer and IPRS. The deceased singer

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had assigned his past, present and future public performance rights, communication to the public rights and reproduction rights in the musical and literary works created, owned or controlled by him. The IPRS can administer the above said rights in any lyric or musical composition created, owned and controlled by the deceased singer. Hence, the collection of license fee and royalties from Spotify, YouTube etc. can only be done by IPRS on behalf of deceased singer and as such, IPRS is the owner of the performing rights and mechanical rights of the deceased singer. It is averred that there are two different songs, i.e., old Jaandi Vaar song and New Jaandi Vaar song and the defendants hold the copyright ownership of the New Jaandi Vaar song, as per section 14(a)(iii) of the Copyright Act and have the right to publish the same. It is averred that the old Jaandi Vaar song was written and composed by the deceased singer and released in the year 2017, shared by YouTube account Sukhwinder Dhillon with title *Jaandi Vaar*. It is averred that Ms. Afsana Khan is co-author of the lyrics in the New Jaandi Vaar song and that the defendants are joint-authors of the said new song. The main 'hook-line' *antaraa* of the said song was composed by defendants No.2 and 3. The authors of the sound recording of new song are the defendants and as such, producers thereof. In July 2021, Ms. Afsana Khan reached out to defendant No.2 with the idea of creative collaboration of the *new* song

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between defendant No.2, 3 and deceased singer. On 21.07.2021, defendant No.2 composed a new song at Sangeetika studio in Chandigarh with deceased singer and the deceased singer suggested an old song which he performed in the past, on which they can collaborate on together. The old song of *Jaandi Vaar* was already uploaded in YouTube channel called 'Sukhwinder Dhillon' on dated 29.10.2017 and the lyrics and musical composition for the old *Jaandi Vaar* song was not created or vested with deceased singer. The old *jaandi vaar* song is unconnected with deceased singer with the sole exception that all these recordings have the deceased singer performing the said song. The lyrics of the old *jaandi vaar* song are distinct from that of the new collaborated song by defendants No.2 and 3. The hook-line of the new song has been authored and composed by defendants No.2 and 3 and the defendants No.2 and 3 took initiative and responsibility of composition of major portion of the song, music, recording the audio performance of Ms. Afsana Khan and deceased singer by bringing them together. As per section 17 of Copyright Act, the author of the work is generally considered to be the '*first owner*' or '*owner*' of such work and as such, the defendants No.2 and 3 have equal ownership over the song and the plaintiffs cannot assert exclusive ownership over the new *jaandi vaar* song. The lyricist is generally the first owner of the copyright in literary work in sound recording whereas music composer owns

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the musical work embodied in the sound recording and the producer is the first owner of all the rights in sound recording. After the part of deceased singer was recorded, the recording of it was shared over through E-Mail by Mr. Pankaj Ahuja with defendant No.2 and the part of Ms. Afsana Khan's song was recorded in the private studio of the defendants. After all the portions were recorded, the defendants compiled all the elements together and created the New *Jaandi Vaar* Song. The statement made by defendant No.2 on the Instagram video was only to inform the public that they can become a part of owner of the song by buying a portion of it and no other proposal was made by the defendants. The defendants did not authorize any NFT's related to the deceased singer or make any representation to that effect at any point of time. The defendants did not authorize defendant No.7 to create, issue, deal with, sell or offer for sale any NFT. Rest of the averments were denied and finally a prayer to dismiss the application was made.

4. Defendant No.4 filed its separate reply, denying all the material averments and asserted therein that they did not publish the release of the song and that the image included in paragraph No.22 is nothing more than a screenshot of an automated notification sent to the *E-mail* address of the artist and not to the public at large. It is asserted that the song is not available for streaming on the *Spotify* service and was never available for the same.

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5. Suit against defendant No.5 was dismissed as withdrawn by the plaintiffs on dated 16.11.2022.
6. Defendants No.6 and 7 filed their joint reply, raising the preliminary objections of maintainability of the application, primarily on the ground that the defendant No.7 is doing the business of edible oil and the website *www.kalakaar.io* has been permanently down since 25.08.2022. It is averred that the defendants No.6 and 7 did not violate any copyright of any person. Rest of the averments were denied and finally a prayer to dismiss the application was made.
7. Defendant No.8 filed its separate reply, denying all the material assertions of the plaintiffs averred therein that the defendant has not released the song Jaandi Vaar and that the plaintiffs are not the owners of the original work in the said song. It is averred that the defendant has not advertised or published any information in regard to the song.
8. Defendant No.9 did not contest the suit or the application by filing application in this regard on dated 04.11.2022, accepted on the same date.
9. Contentions of learned Counsel for the parties have been heard at length and record has been perused with their kind assistance.
10. Learned Sr. Counsel appearing for the plaintiffs has contended that the defendants No.1 to 3 have admitted in their written that the

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deceased singer was the author of the song Jaandi Varr, either it was old version or the new version and thus taking this admission on the part of the defendants No.1 to 3 itself would make out a *prima facie* case in favour of the plaintiffs. He has contended that the lyrics of the song in question and the previously sung song of the deceased singer, as reproduced in paragraph No.25 of reply of defendants No.1 to 3, would leave no room to doubt about the case of the plaintiffs as the lyrics in both the songs are totally similar. The learned Senior Counsel for plaintiffs has argued that even if it is admitted for the sake of arguments that lyrics of the song sung by Ms. Afsana Khan is the contribution of the defendants No.1 to 3, still the defendants No.1 to 3 cannot be said to be the author of the said song as mere alteration or addition of few words or lines therein would not make out the old song a totally new song. He has pointed out the defendants No.1 to 3 have claimed that the deceased singer had assigned his rights to the IPRS and even if this claim of the defendants is accepted for the sake of arguments, still they are not entitled to play the song as there is not a single document on the file to show that the said society (IPRS) has given such authority or license to these defendants to publish the song in question.

11. Per contra, Mr. M.S. Sawhney, learned Counsel for the defendants No.1 to 3, contended that the defendants have denied the rights of the plaintiffs because the same has not been established by them by

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placing a single document on record. He contends that at the most, the defendants No.1 to 3 claimed that the deceased singer has only performed in the song in question and by his performance only, he did not acquire any right, especially when the defendants No.1 to 3 co-authored the song in question with Ms. Afsana Khan. He has also contended that the defendants never admitted that the plaintiffs or their son was the author of the song sung by the deceased singer, either it is old version or the new version. He has relied upon *S.P. Chengalvaraya Naidu Vs. Jagannath & Ors.*, 1994 AIR 853 SC, *Wheels India Vs. Nirmal Singh & Ors.*, 2010 SCC OnLine Delhi 2852, *Gurdeep Singh Vs. State of Punjab*, 1990 SCC OnLine P&H 132, *Karnataka State Road Transport Corporation Vs. Ashrafulla Khan* (2002) 2 SCC 560, *Union of India Vs. Kirolskar Pneumatic Company*, (1996) 4 SCC 453, *Manish Goel Vs. Rohini Goel*, (2010) 2 SCR 414, *Magarida Sequeria Fernandes & Ors. Vs. Erasmo Jack de Sequeria*, AIR 2012 SC 1727, *Wander Ltd. Vs. Antox India Pvt. Ltd.*, 1990 Supp(1) SCC 727, *New Sahitya Prakash & Ors. Vs. Anand Kumar & Ors.*, AIR 1981 Allahabad 200, *Angath Arts Pvt. Ltd. Vs. Century Communications Ltd. & Ors.*, AIR 2009 Bombay 26 and *Powell Vs. Head*, 12 Ch. D. 866 to contend that the plaintiffs, who have not approached the Court with clean hands, did not place on file any document of their

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ownership in the song and concealed the fact regarding their son being an assignee of his rights to the IPRS, are not entitled for ad-interim injunction.

12.As is apparent from the replies of remaining defendants, they have admitted to have removed the song from their platforms. Mainly, the main contending defendants are defendants No.1 to 3 only.

13.Before entering into the contentions raised by the Counsel for the parties, it will be profitable to have a glance on the relevant provisions of the Copyright Act, quoted below:—

Section 2(d) “author” means,-

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

Section 17. First owner of copyright. *Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:*

Provided that-

a) in the case of literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar

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periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

b) subject to the provisions of Clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

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c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which Clause (a) or Clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

14. The aforesaid provisions makes it abundantly clear that so far lyrics and musical works are concerned, lyricist and composer respectively are the authors thereof and in view of Section 17 of the Act, the first owner of the copyright of lyrics and musical works shall be the authors unless it is shown that such work was made in the course of author's employment under a contract of service or apprenticeship with his employer and there is no agreement to the contrary as regards retention of copyright. Section 17(b) of the Act specifies the instances where an author, engaged under a 'contract for service', loses copyright, which are the cases of taking photograph, drawing painting or portrait, engraving and making cinematograph film. It is the case of the plaintiffs, as per paragraph No.17 of their plaint, that their son written and composed the song in question in the year 2018 and has exclusive ownership right over the same. In reply of the same, the defendants No.1 to 3 have

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admitted that the Old *Jaandi Vaar* song was written and composed by Late Mr. Moosewala, released in the year 2017, which was tracked upto 29.10.2017, shared by YouTube account Sukhwinder Dhillon with the title *Jaandi Vaar*. Although learned Counsel for the defendants No.1 to 3 have contended that they did not admit the deceased singer as the original author of the song but the written statement filed by the defendants categorically did so. Although learned Counsel for the defendants No.1 to 3 have relied upon ***Sopan Sukhdeo Sable & Ors. Vs. Assistant Charity Commissioner & Ors., (2004) 3 SCC 137*** to contend that not any particular plea has to be considered and the whole of the pleadings has to be read and that it is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. However, in view of the specific admission to the claim of the plaintiffs by the defendants No.1 to 3 in their written statement, especially in the matters related to the Commercial Dispute, the above referred law does not provide help to the defendants. If the deceased singer is the not the author of the song, as argued by learned Counsel for the defendants No.1 to 3, then in view of the amended Civil Procedure Code for the purpose of commercial disputes, i.e., order VIII Rule 3-A (3) CPC the defendants had to disclose who is the author of the song in question. Ergo, due to the *proviso* of Order VIII Rule 3-A Civil Procedure Code, the evasive

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denial on the part of the defendants No.1 to 3 tantamount to admission on their part. It is admitted case of the defendants No.1 to 3 that the deceased singer or Ms. Afsana Khan were not engaged for any of the aforesaid job. It is not the case of the defendants No.1 to 3 that the singers were their employees at any point of time and in course of such employment the song in question (old and new) were written, composed or sung. As such, when the deceased singer did not sing the song in question for any remuneration or any contract of service with defendants No.1 to 3, therefore, the said deceased singer did not lose his copyright over the song in question, especially to the defendants No.1 to 3.

15. The pleadings of the defendants No.1 to 3 show that the deceased singer is the author and singer of the song in question and the defendants No.1 to 3 claim to be music recorder of the song. The defendants No.1 to 3 have claimed that the song in question was sung by the deceased singer twice, i.e., once in the year 2017 and thereafter in the year 2021 and that there are two versions of the same song, one the original and the other, collaborated with Ms. Afsana Khan (a non-party to the suit). The lyrics of both the songs reproduced by the defendants No.1 to 3 in their written statement in Paragraph No.28 at Page No.14 would clearly show that there is no difference therein, so far as the main part of the song, sung by the deceased singer is concerned. There is absolute

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similarity between both the lyrics of the deceased singer, leaving no room for denying the case of the plaintiffs and accepting the contention of learned Counsel for the defendants No.1 to 3 that it is not the exclusive creation of the deceased singer. It is the case of the defendants No.1 to 3 that the copyright of the old song lies with some other person and the deceased singer had no right therein and the new song is different from the old one in the sense that the hook-line thereof has been prepared by the defendants. Even if this contention of the defendants is accepted to be true, still the defendants No.1 to 3 have no right to release the song as by doing so, they are affecting the copyright of that third person, with whom the copyright is stated to be with, although no document has been produced by them in this regard. The defendants No.1 to 3 claim to be co-author of the song, which is not *prima facie* made out from their own admitted pleadings in the reply. The defendants No.1 to 3 claim that they rendered services in improvement of song, collaboration with old song of deceased singer and with the help of Ms. Afsana Khan. However, the defendants No.1 to 3 are totally silent with regard any agreement between the deceased singer and that of Ms. Afsana Khan regarding recording of song by them, distribution of royalties or remuneration of the services rendered by both the singers to them nor there is any such document on the record in this regard. The defendants No.1 to 3 have claimed that

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the deceased singer had assigned his rights to the Indian Performing Rights Society (IPRS), a non-profit society and as such, the IPRS has the right to release the said song. Be it noted that the IPRS is not a party to the present suit nor the plaintiffs have any threat against the said society nor the said society has ever claimed publicly to release the song. Even if it is accepted that the IPRS has the right over the song, still the license to release the said song has neither been asserted to have been received by the defendants No.1 to 3 from the said society nor placed on record.

16. It is admitted fact that the defendants No.1 to 3 proclaimed to release the song publicly on their *instagram* page, without consent of the plaintiffs or without there being any kind of written agreement with deceased singer or Ms. Afsana Khan. It is admitted fact that the deceased singer is the original author of the song, which was sung by him in the year 2017 and the new song in question is nothing but reprised version or cover version of the old song, for which, even the defendants No.1 to 3 were require to obtain right from the deceased singer.

17. A song, which was sung earlier by the deceased singer, could not be changed or reprised by the defendants even without the written agreement or assignment of rights from the deceased singer. The act of the defendants No.1 to 3 is apparently prohibited by section 31C(1) of the Act, which is reproduced as below:

31C: Statutory licence for cover versions: - (1) *Any person desirous of making a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work, may do so subject to the provisions of this section:*

Provided that such sound recordings shall be in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

(2) *The person making the sound recordings shall give prior notice of his intention to make the sound recordings in the manner as may be prescribed, and provide in advance copies of all covers or labels with which the sound recordings are to be sold, and pay in advance, to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the [Commercial Court] in this behalf:*

Provided that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name

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or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

(3) The person making such sound recordings shall not make any alteration in the literary or musical work which has not been made previously by or with the consent of the owner of rights, or which is not technically necessary for the purpose of making the sound recordings:

Provided that such sound recordings shall not be made until the expiration of five calendar years after the end of the year in which the first sound recordings of the work was made.

(4) One royalty in respect of such sound recordings shall be paid for a minimum of fifty thousand copies of each work during each calendar year in which copies of it are made:

Provided that the [Commercial Court] may, by general order, fix a lower minimum in respect of works in a particular language or dialect having regard to the potential circulation of such works.

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(5) The person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock as may be prescribed and shall allow the owner of rights or his duly authorized agent or representative to inspect all records and books of account relating to such sound recording:

Provided that if on a complaint brought before the [Commercial Court] to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this section, the [Commercial Court] is, prima facie, satisfied that the complaint is genuine, it may pass an order ex parte directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty.

Explanation.—For the purposes of this section “cover version” means a sound recording made in accordance with this section.

18. The above said provision, which is applicable to the facts and circumstances of the present case, has been fairly demonstrated by

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the Honorable High Court of Delhi in *Star India Pvt. Ltd. Vs. Piyush Aggarwal & Ors., 2012 SCC OnLine Delhi 5691*,
which is reproduced as below:

“15(i) In order to appreciate the aforesaid sections, and more particularly Section 31C, an example is required to be given. Suppose a famous singer sings particular lyrics and which singing is accompanied by an orchestra which plays out music. This performance involves various works and use of all such works jointly results in a new copyright work called the sound recording which let us call the first sound recording. In such first sound recording there are a total of three copyrights which get amalgamated to create one consolidated work. The first copyright is in the lyrics created by the lyrics writer i.e. the literary work. The second copyright is in the musical work. The third copyright is in the performance by the performers viz the singer and the persons comprising the orchestra.

To be noted is that music is different from sound i.e. music only means what are the musical notes which are found on the paper or other writing medium, and not what we hear. What we hear, and

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which is called music in layman's terms, is really a sound created by the musician by playing an instrument in terms of musical notes (which is the musical work and the subject matter of a copyright) and performance brings about a 'sound recording'. Thus music as a layman understands is different from what is 'music' under the Act because when a song is sung, and which singing is accompanied by an orchestra, there results in what is commonly known as the musical work, however really, this normal concept of musical work is a misnomer inasmuch as the combination of all the three aforesaid works is really what is a 'sound recording' as per Section 2(xx) of the Act.

(ii) Once a combination of the aforesaid three works being the lyrics, music and the performer's works together, is performed and a sound recording created, that sound recording which is the first sound recording, is recorded on what is known as a 'plate' under Section 2(t) of the Act. It is from such plate that subsequently copies are prepared and the right to prepare such copies is one of the copyrights qua a copyright work which is specifically

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provided under Section 14(e) of the Act. Therefore, no one can prepare any copies either from the original plate or the copies of the work (which are also a subject matter of the copyright) unless permission or license is taken from the author of the sound recording.

(iii) After the first sound recording is made, then, if and after permissions are taken from the authors of the musical work and the lyrics writer which formed the basis of the first sound recording, another band of orchestra with the singer (i.e. another set of performers) can by their performances on the basis of the existing musical work and the lyrics, cause to come into being a new sound recording. This second/subsequent sound recording is called a version recording/cover version. This new/second sound recording itself is a subject matter of a copyright by virtue of Section 13(1)(c) of the Act and there exist the entitlements on the basis of such sound recording to exercise rights as provided in Section 14(e) of the Act. To further clarify, on utilization of original musical work and the lyrics from which the first sound recording is made, various

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independent/subsequent sound recordings can be made, and each of which subsequent sound recording would be original sound recording for being the subject matter of the copyright under Section 13(1) (c) of the Act. Of course, at the cost of repetition, no sound recording can be created from the original musical work or the lyrics unless license is taken, whether contractual or statutory under the Act, from the authors of the musical work and the literary work/lyrics.”

The Honorable High Court of Bombay in ***Ram Sampath v. Rajesh Roshan***, 2008 SCC OnLine Bom 370 has held,

“In my view for considering whether a copy of a part of the former musical work into the latter musical work amounts to an actionable infringement, the following factors would be required to be taken into consideration. First is to identify the similarities and the differences between the two works. Second is to find out whether the latter would meaningfully exist without the copied part. It may be necessary to find the soul of a musical work. The soul cannot be determined merely by comparing the length of the part copied but whether the part copied is an

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essential part of a musical work. Though a musical work may have a length of several minutes, the listener often remembers a “catch part” to which he is immediately hooked on. It is necessary to look for such “catch part” to the “hook part”. If the “catch part” or hook part, howsoever small, is copied the whole of the latter work would amount to actionable infringement. It is necessary to remind oneself that the desire, of an infringer, is necessarily to copy “the attractive”, “the catchy”, the grain” and leave the chaff, for he would attract the audience only by the attractive, and not by the ordinary. These factors are only illustrative and there would be many other factors which may be required to be looked into depending upon the facts and circumstances of each case. In the present case, though the part which is copied is small and is only of 6 seconds, it is repeated atleast four to five times in the defendants’ work even as per their own admission. What was the need of repetition of the same part has not been explained in the affidavit in reply and that is perhaps because the defendant No. 1 knew that it was the “catch part” or the part to which the listener would

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be hooked to when he hears or re-hears the musical work. I think it was in University of London v. University of Tutorial Process Ltd. that Lord Justice Paterson said; “What is worth copying, is prima facie worth protecting” I would only add “what is worth copying 4-5 times over in the same work is most certainly worth protecting. In my view, therefore, even if it is held that the portion copied is only a small part of the work of the plaintiff, it amounts to an actionable infringement giving rise to a cause for action in damages as well as injunctive relief.”

19. Thus it is apparent from the above said discussion that a *prima facie* case in favour of the plaintiffs, at this stage, is made. From the pleadings of the parties, it is crystallized that the original song was sung by the deceased singer and after him, the present plaintiffs holds the copyright, for which, the defendants No.1 to 3, in absence of any agreement or contract to the contrary between them and deceased singer or plaintiffs, cannot publish the song in question in any manner. Balance of convenience also lies in favour of the plaintiffs, for the reasons mentioned above. Irreparable loss would be caused to them if the defendants No.1 to 3 are permitted to release the song in question and remaining defendants are permitted to play it on their platform or sell the right thereof, till the final

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decision of the suit. As a result of what has been discussed above, the application under consideration is allowed. The defendants No.1 to 3 are restrained from releasing or publishing the song *Jaandi Vaar*, in any manner whatsoever, till final disposal of the suit. No part of the song in question shall be used in any manner by the remaining named or unnamed defendants nor the right in the song shall be sold by any named or unnamed defendants till the final decision of the suit.

20. Before parting with the order and taking into consideration the IPR involved in the song in question, it is made clear that the matter shall be decided as early as possible and within five months from the date of framing of issues. The parties shall be granted two months time each, to conclude their evidence, which shall not be extended in any circumstance. The first case management hearing shall be held on the next date of hearing, in terms of order XV-A rule 1 Civil Procedure Code (as amended for Commercial Courts Act, 2015).

21. Needless to observe that anything observed herein shall have no effect on the merits of the case.

(Sumit Bhalla)
(Commercial Court)
Mansa (PB0259)

Date of Order: 17.11.2022
Vikas

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Present: Mr. Babu Singh Mann, Advocate for Mr. Amit Jhanji, Sr. Advocate, for plaintiffs
Mr. Satish K. Singla & Mr. M.S. Sawhney, Advocates for defendants No.1 to 3
Mr. Harsimran Duggal and Ms. Janya Sirohi, Advocates for defendant No.4
Suit dismissed as withdrawn qua defendant No.5
Mr. Rakesh Raushan, Advocate for defendants No.6 & 7 (through Video Conferencing Facility from Delhi)
Mr. M.S. Sawhney, Advocate for defendant No.8
None for defendant No.9
Defendants No.10 and 11 Ex parte

Arguments heard. Vide my separate order of the even date, the stay application stands allowed. Adjourned to 02.12.2022 for filing reply of the application of defendant No.7 by the plaintiffs, subject to last opportunity and for the first case management hearing in terms of order XV-A rule 1 Civil Procedure Code (as amended for Commercial Courts Act, 2015).

(Sumit Bhalla)
(Commercial Court)
Mansa (PB0259)

Date of Order: 17.11.2022
Vikas