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

+ CS(COMM) 562/2020

I.A.12496/2020 (under Order XXXIX Rule 1 and 2 CPC)

I.A.12497/2020 (under Order XI Rule 1, 3 and 5 Commercial Courts Act)

I.A.12498/2020 (under Order XI Rule 1(4) Commercial Courts Act)

I.A.12499/2020 (exemption)

THE INDIAN SINGERS RIGHTS ASSOCIATION Plaintiff

Represented by: Mr.Pravin Anand, Advocate with
Mr.Dhruv Anand, Ms.Udita M. Patro,
Advocates.

versus

DHARMA PRODUCTIONS PVT. LTD. Defendant

Represented by: Mr.Chander Lall, Sr. Advocate with
Ms.Bindi G.Dave, Mr.Pranaya Goyal,
Mr.Rohini Goyal, Mr.Aman Raj
Gandhi, Ms.Nancy Roy, Mr.Utkarsh
K. & Ms.P.Bhatnagar, Advocates for
Dharma Productions Pvt. Ltd.

Mr.Sanjeev Sindhvani, Sr. Advocate
with Mr.Ankur Sangal, Ms.Sucheta
Roy and Mr.Shantanu Rawat,
Advocates for proposed intervenor
Saregama India Limited.

Mr.Harsh Kaushik, Advocate with
Mr.Abhay Chattopadhyay,
Mr.S.S.Ahluwalia, Ms.Anushree
Rauta, Mr.Mohit Bangwal, Advocates
for proposed intervenor Zee
Entertainment and Tips Industries
Ltd.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER
22.12.2020**

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The hearing has been conducted through video conferencing.

I.A.12499/2020 (exemption)

1. Exemption allowed subject to just exceptions. Original documents be filed within thirty days.
2. Application is disposed of.

I.A.12498/2020 (under Order XI Rule 1(4) Commercial Courts Act)

1. Additional documents, if any be filed within thirty days.
2. Application is disposed of.

CS(COMM) 562/2020

I.A. 12496/2020 (under Order XXXIX Rule 1 and 2 CPC)

I.A.12497/2020 (under Order XI Rule 1, 3 and 5 Commercial Courts Act)

1. Plaintiff be registered as a suit.
2. Issue summons in the suit and notice in the applications to the defendant.
3. Mr.Pranaya Goyal, Advocate accepts summons in the suit and notice in the application on behalf of the defendant.
4. Written statement to the suit and reply affidavit to the applications along with the affidavits of admission-denial be filed within thirty days. Replication and rejoinder affidavit along with the affidavit of admission-denial within three weeks thereafter.
5. The present suit has been filed by the plaintiff seeking enforcement of its performers' rights which were introduced in the Copyright

(Amendment) Act, 2012 by amending Section 38 and introducing Section 38A and 38B to the Copyright Act. Claim of the plaintiff is that the defendant released the cinematograph film 'Gunjan Saxena- The Kargil Girl' commercially utilizing three performances of the members of the plaintiff society which were originally part of earlier cinematograph films. The plaintiff on becoming aware of the infringement of its rights issued a legal notice to the defendant claiming that the plaintiff's members had the copyright in respect of the performers' rights in 'Ae Ji O Ji' from the cinematograph film 'Ram Lakhan', 'Choli Ke Peeche Kya Hai' from the cinematograph film 'Khalnayak' and 'Saajan ji Gher Aaye' from the film 'Kuch Kuch Hota Hai'. According to the learned counsel for the plaintiff, since as per the scheme arrived at, the tariff for the performers' rights is fixed, the defendant is bound to deposit the said amount before this Court pending final decision. Plaintiff claims its rights on the basis of Section 2(q) and Section 2(qq) of the Copyright Act, which defines the 'performance' and 'performer' as also Sections 38A and 38B of the Copyright Act. Reliance is also placed on the Copyright Rules, 2013, wherein, the Explanation 3 to Rule 68 Sub-Rule 4 provides that for the purposes of this Chapter, 'performance' includes recording of visual or acoustic presentation of a performer in the sound and visual records in the studio or otherwise.

6. Learned counsel for the defendant who enters appearance on advance notice claims that the studio performances which do not go live, are not considered to be live performances and in the present case, since the performance is in studios which do not go live, the plaintiff's members cannot claim performers' rights.

7. This Court in the decision reported as 2006 (32) PTC 779 (Del.) Neha Bhasin Vs. Anand Raj Anand & Another had an occasion to deal with this issue in para 35, which reads as under:-

“35. I now come to the argument on law. Mr. Sudhir Chandra submitted that there is no contract between the plaintiff and the defendants. The plaintiff also has no copyright as defined under the Copyright Act, 1957. Even the allegation of the plaintiff that the plaintiff has a performer's rights cannot be sustained inasmuch as, according to Mr. Sudhir Chandra, such rights are only in respect of live performances and not recorded songs. He raised the question more than once - what is the right which the plaintiff seeks to enforce or to prevent its breach? And, of course, he submitted that if in the suit the plaintiff is able to establish that she was wronged then she would be entitled to damages but not an injunction. While the submission that the plaintiff does not have a copyright in the song may have substance, the submission that the plaintiff also does not have any performer's rights is at best debatable. It is essentially the reproduction of the performance through sound or visual recordings without the permission of the performer that is prohibited. While the definition of "performer" in section 2 (qq) of the Copyright Act, 1957 includes within its sweep a singer, section 2(q) defines "performance", in relation to performer's right, to mean any visual or acoustic presentation made live by one or more performers. Every performance has to be live in the first instance whether it is before an audience or in a studio. If this performance is recorded and thereafter exploited without the permission of the performer then the performer's right is infringed. So, as regards performers' right's the plaintiff definitely has a serious triable case.....”

8. This Court referring to the definition of ‘performer’ in Section 2(qq) of the Copyright Act noted that the Section includes a Singer within its sweep and the performers’ right means any visual or acoustic presentation made live by one or more performers. Every performance has to be live in

the first instance whether it is before an audience or in a studio. Therefore, this Court held that the plaintiff's performers' right is a serious triable issue.

9. Considering the fact that the rival contentions and the underlying agreements are yet to be considered by this Court, this Court, at this stage, is deferring passing any order/directions to the defendant to deposit the amount till the next date of hearing before which date parties will complete their pleadings.

10. List the suit and applications before Court on 12th March, 2021.

11. Copy of the order be uploaded on the website of this Court.

MUKTA GUPTA, J.

DECEMBER 22, 2020

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