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

Date of Decision: 10th October, 2022

+ **CS (COMM) 188/2022 and I.A. 4772/2022**

PHONOGRAPHIC PERFORMANCE LIMITED Plaintiff

Through: Ms. Sucheta Roy, Advocate (M-9654592881)

versus

LOOKPART EXHIBITIONS AND EVENTS
PRIVATE LIMITED

..... Defendant

Through: Mr. Rajat Manchanda, Mr. Manish Kumar Singh, Mr. Manik Dhingra, Ms. Tanya Singh & Ms. Radhika Jain, Advocates (M-9899850805).

Mr. Jadeep Dhillon & Ms. Mohina Anand, Advocates for Novex.

Ms. Deepshika Sarkar & Ms. Bhanu, Advocate. (IPRS) (M-9250338066)

Prof. Arul George Scaria – Independent Expert.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiff - Phonographic Performance Limited (*hereinafter*, “PPL”) which is engaged in the business of issuance of licenses for public performance/communication to the public of sound recordings on the basis of assignments granted to it by its member record labels, i.e., owners of copyright in sound recordings. The Plaintiff seeks an injunction against the Defendant- Lookpart Exhibitions and Events Private Ltd., which is an event management company, providing various

event management services, including DJ services for various social events, such as weddings.

3. The matter was listed for the first time on 29th March, 2022. On the said date, summons were issued in the present suit. Further, in order to secure the interest of the parties, the Defendant was directed to deposit a sum of Rs.1,00,000/- with the Registrar General of this Court.

4. Thereafter, submissions were heard in part on 11th May, 2022. On the said date, this Court was of the opinion that the dispute raised in the present suit involved an interpretation of Section 52(1)(za) of the Copyright Act, 1957 (*hereinafter*, “Act”). In view of the significance of the legal issue that had arisen and its large-scale implications for artists, societies and other stakeholders, the competing stands of the parties were recorded. In addition, in terms of Rule 31 of the Delhi High Court Intellectual Property Division Rules, 2022, it was deemed appropriate to appoint Dr. Arul George Scaria, as an expert to assist the Court and file a written note of submissions. The relevant portion of the said order dated 11th May, 2022 is set out below:

“5. The present case involves an interpretation of Section 52(1)(za) of the Copyright Act, 1957 (hereinafter, “Act”). The said provision reads as under:

“(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Explanation.-- For the purpose of this clause, religious ceremony includes a marriage procession and other social

festivities associated with a marriage;]”

6. *The case of the Plaintiff is that the Defendant is using sound recordings in respect of which the Plaintiff has rights, at various social events managed and organised by it at commercial venues, on a regular basis. It is submitted that the Defendant, while organising its events, including weddings / marriage ceremonies and other social events, ought to obtain licences for playing music. However, according to the Plaintiff, the Defendant has refused to obtain a license despite correspondence having been addressed to the Defendant.*

7. *On the other hand, the Defendant relies upon the Explanation to the above provision to argue that when music is to be played for the purposes of marriage ceremonies or other social events connected with marriages, including a marriage procession, the use of music is deemed to be fair use, and hence, no licence would be required.*

8. *This Court is of the opinion that, in the Indian context, music is an integral part of any wedding or marriage ceremony. The kind of music played typically ranges from devotional or spiritual music for the purposes of the marriage ceremony to popular music in various languages. Apart from the actual marriage ceremony itself, there are other ceremonies such as tilak, sagan, cocktail parties, dinner, mehndi, sangeet, etc., which have become an integral part of the wedding festivities. In all such ceremonies also music is played. The above provision was inserted into the statute by virtue of **The Copyright Amendment Act 1994 w.e.f.10th May 1995.***

9. *The issue which has been raised in the present case would have large scale implications for artists such as lyricists, music composers, singers, sound recording producers and owners on the one hand as also, for entities involved in the organisation and management of weddings and other social events. The*

issue would also concern society in general.

10. Rule 31 of the Delhi High Court Intellectual Property Rights Division Rules, 2021 reads as under:

“31. Panel of Experts

The Court may, in any IPR subject matter, seek assistance of expert(s) (including individuals and institutions) relating to the subject matter of the dispute as may be necessary. The opinion of the expert shall be persuasive in nature and shall not be binding on the Court. The IPD may maintain a panel of experts to assist the Court which panel may be reviewed from time to time. The remuneration of the expert(s) shall be decided by the IPD. Prior to appointment, a declaration will be provided by the expert that he or she has no conflict of interest with the subject matter of the dispute and will assist the Court fairly and impartially.

Provided that the protocol to be followed by such expert(s) shall be prescribed by the IPD, from time to time.”

11. As per the above Rule, the Court may seek assistance of experts if deemed appropriate, considering the nature of the matter and the importance of the issue involved.

12. Keeping in mind the significance of the issue to be adjudicated, this Court is of the opinion that the opinion of an expert would be of assistance to the Court. Accordingly, this Court appoints **Dr. Arul George Scaria (M: 8527262232) (Email: arulgs@gmail.com), Associate Professor of Law and Co-Director, Centre for Innovation, IP and Competition, National law University, Delhi**, who has authored books on Copyright and several articles in the field of IP, as an expert to assist the Court.

13. Let the Registry issue notice to Dr. Arul George Scaria at the email address and phone number. The expert shall file a written note of submissions on the issue raised in the present case. The expert would

consider the legislative history of the provision Section 52(1)(za) of the Copyright Act, 1957, and cite the relevant case law, from India and abroad on the question of fair use and fair dealing. For the said purpose, the Registry to transmit the electronic record of the present case to the expert.”

5. Pursuant to the above appointment vide order dated 11th May, 2022, Dr. Scaria has filed detailed written submissions, which were placed before this Court on 6th July, 2022. The said written submissions were also served upon the Id. Counsels for the parties. On the said date, M/s. Novex Communications Pvt. Ltd. and The Indian Performing Right Society Limited (IPRS) sought intervention as interested parties in the present suit. As recorded in the order dated 6th July, 2022, both the said parties were permitted to intervene in the present proceedings, considering the nature of issues involved.

6. Today, Id. Counsel for the Intervenor submits that the legal issue raised in the present case has been considered by other Courts. Reliance is placed upon the judgment of the Id. Single Judge of the Punjab and Haryana High Court in ***CWP No.28758 of 2019 (O&M)*** titled ***Novex Communications Private Limited v. Union of India & Anr.***, wherein the Court quashed the impugned public notice exempting the use of copyrights sound recordings for the purposes of marriage functions, and held that the question of fair use under Section 52(1)(za) has to be decided on a case-by-case basis. The relevant extracts from the said judgment are set out below:

“[14]. The question whether certain acts would fall within the exempted categories as enumerated under Section 52(1) of the Act has to be decided according to facts of each case. In view of aforesaid there cannot be general interpretation to the, provision as given in the

impugned public notice/letter. The theory of presumed intention or fair use and infringement, public, interest etc is to be judged on the material available in a given case. When the copyrights are exploited for the commercial purpose, the remedy lies under the Act itself i.e. both under civil as well criminal laws.

*[15]. The impugned public notice/letter dated 27.08.2019 can be misused by certain notorious elements in order to enrich themselves by playing the sound recordings for commercial gains in commercial spaces after obtaining requisite authorization from the authority. The element of commercial gain cannot be ruled out from the interpretation as given by respondent No.2 to Section 52 the Copyright Act, 1957. Respondent No.2 has no authority under the Act to clarify or interpret applicability of law in the manner as suggested in the impugned public notice/letter. The impugned public notice does not disclose the authority under which the same has been issued. The impugned public notice cannot override the provisions of Copyright Act and cannot take away the statutory right of the petitioner under Section 55 of the Act to initiate civil proceedings in the Court of law for the infringement of Copyright Act, 1957. The impugned interpretation would give rise to a very enormous situation and in such eventuality, the police authorities may refuse to take cognizance of the offence of infringement of copyright, which may be an offence under Section 63 of the Act punishable therein. The impugned public notice is in contravention of the ratio laid down in **M/s Phonographic Performance Limited case (supra)***

[16]. The impugned public notice is also violative of the doctrine of separation of power as an attempt has been made by respondent No.2 to usurp the legislative power of enactment and judicial power of interpretation. The impugned public notice also infringes the right of the petitioner under Article 19(1

)(g) of the Constitution of India and it overrules the provisions of copyright. The impugned public notice does not provide any such reasonable restrictions in the context of Article 19 of the Constitution of India. Even otherwise, those restrictions ought to be imposed through process of law to be enacted by the Parliament or the State Legislature as the case may be. Such restrictions cannot be imposed by means of executive restrictions and public notice seeking to explain or interpret the provisions of law without sanction and leave of the legislative authorities. The public notice seeks to impinge upon the fundamental rights and protections granted by the Constitution of India and is violative of Articles 13 and 14 of the Constitution of India. The protections granted by the copyright Act are sought to be abridged by the public notice, which is unsustainable.

[17]. The defences submitted by respondents No.1 and 2 in the context of relief are not in public interest and the public notice only explained the existing provisions in terms of Section 52(1)(za) of the Copyright Act are totally fallacious for the reasons recorded hereinabove.

[18]. In view of above, the impugned public notice is quashed. This writ petition is allowed. Consequential action to follow.”

7. It is submitted by Id. Counsels for the Plaintiff and the Defendant that the parties have resolved their disputes amicably. Accordingly, the Plaintiff wishes to withdraw the present suit.
8. In view of the settlement arrived at between the parties, the present suit is dismissed as withdrawn. The sum of Rs.1,00,000/- deposited by the Defendant with the Registrar General of this Court is directed to be released to the Plaintiff. All pending applications are also disposed of.
9. However, this Court records the valuable assistance rendered by the

Expert - Dr. Scaria. Considering the time and effort expended by Dr. Scaria in addressing the legal issues which have been raised in the present suit, the summary of his written submissions are captured below:

“B. Summary of the submissions

7. The current international legal instruments on intellectual property, particularly the Berne Convention for the Protection of Literary and Artistic Works, 1886 (“Berne Convention”), the Agreement on Trade-related Aspects of Intellectual Property Rights, 1995 (“TRIPS Agreement”), WIPO Copyright Treaty (“WCT”) and WIPO Performances and Phonograms Treaty (“WPPT”) provide sufficient flexibilities for the member states to provide exceptions and limitations that are fine-tuned to the local social, economic, cultural and legal requirements. The Indian copyright law has made use of the flexibilities available within the international copyright law framework, striking a fair balance between fostering incentives for creativity and ensuring adequate access to copyrighted works for the society through the various exceptions and limitations provided under the Act. S. 52(1)(za) of the Act is one such exception, which comes within the scope of ‘implied exceptions’/ ‘minor exceptions’/ ‘minor reservations’ allowed under the international treaties on copyright law.¹ As per the TRIPS Agreement, the member states are required to submit their laws to the TRIPS Council to ensure that the provisions are in compliance with the TRIPS Agreement. India has submitted her copyright laws and no objections have been raised by any of the Member States on S. 52(1)(za). This may also be viewed as an affirmation that the Member States of the WTO agree that this provision is in compliance with the Berne Convention and the TRIPS Agreement.

8. S. 52(1)(za), including the explanation provided therein, warrants a broad reading in view of the legislative intention as well as the Indian socio,

economic, legal and cultural context. The following specific aspects may be taken into consideration by the Court while adjudicating the scope of S. 52(1)(za). First, marriage is one of the most important social institutions in India and marriage ceremonies as well as the related festivities are given the highest importance by most communities in India. S. 52(1)(za) needs to be interpreted in a manner that protects and promotes the important constitutional right under Article 21 of the Constitution to perform marriage and engage in marriage related festivities in accordance with one's own tradition and culture. Second, the existence of criminal remedies for copyright infringement, combined with the fact that copyright owners are not required to go through any formal examination system to claim copyright ownership over any subject matter, makes it important to limit the scope of rights of copyright owners in the context of official and religious ceremonies, and more specifically ceremonies and festivities associated with marriages. As copyright infringement is also now interpreted by the Supreme Court as a cognisable and non-bailable offence under S. 63 of the Act, a narrow reading of the provision may lead to potential harassment by police officers and copyright owners during one or more of the important ceremonies or festivities associated with marriage. Third, potential police intervention during marriage or any social festivities associated with marriage is also a potential threat to the right to privacy guaranteed under the Constitution.

9. As is evident from diverse case-laws and scholarly literature from different jurisdictions including India and the United States, the engagement of a facilitator who empowers a copyright user to exercise their legitimate user rights under copyright law or the commercial character of that facilitating entity, should not prevent the Court from allowing the exercise of a

right provided under copyright law. In the absence of facilitators, most users in India may not be able to exercise their legitimate rights under S. 52(1)(za).

10. The Court may also examine whether the invitees to a marriage can be considered as “public” under the Act for the purpose of analysing whether there is a violation of right of public performance or right of communication to the public. While the Indian copyright statute does not define the term ‘public’, relevant case-laws suggest that ‘public’ has to be understood in accordance with the ‘character of the audience’. In the specific context of marriages in India, invitees are generally limited to those from family and social circles of the partners in the marriage. Hence, there may not be a violation of the right of public performance or right to communicate to the public.

11. Finally, a balanced copyright system necessitates drawing a delicate balance between the rights granted to copyright owners through exclusive rights and the rights provided to the society/ users of copyrighted works through limitations and exceptions. The social, cultural, historical, and legal context of S. 52(1)(za) warrants a balanced interpretation of the provision to ensure protection and promotion of social benefits.”

10. Let the written submissions filed by Dr. Scaria be taken on record and be tagged along with the electronic record of the present suit.

11. It is made clear that this Court has not considered the merits of the matter and is not ruling on the legal issue, which has been raised in the present suit. This Court has merely captured the summary of the written submissions filed by the Expert, for the sake of record.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 10, 2022/Rahul/AD