

\$~2

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

Date of Decision: 11th May, 2022

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

PHONOGRAPHIC PERFORMANCE LIMITED Plaintiff

Through: Mr. Akhil Sibal, Sr. Advocate with
Mr. Ankur Sangal, Ms. Suchita Roy
& Ms. Trisha Nag, Advocates (M-
9876322740)

versus

**LOOKPART EXHIBITIONS AND EVENTS PRIVATE
LIMITED** Defendant

Through: Mr. Rajat Manchanda & Ms. Tanya
Singh, Advocates (M-9899850805)

**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. Submissions have been heard in part on the application being **I.A.4772/2022** seeking interim injunction. Mr. Akhil Sibal, Id. Senior Counsel has made submissions on behalf of the Plaintiff.

4. Reply on behalf of the Defendant is stated to have been filed. However, the same is not on record. Let the same be brought on record. Copy of the same has been handed over to the Court and the same has been perused.

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.

14. The Court fixes the fee of the expert at a lump sum of Rs.1,00,000/-. Ld. Counsels for the Plaintiff have fairly agreed to bear the said fee of the

expert.

15. List for further submissions on 6th July, 2022.

16. This shall be treated as a part-heard matter.

**PRATHIBA M. SINGH
JUDGE**

MAY 11, 2022

Rahul/AD

