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

+ **CS(COMM) 1/2024**

NIVEDITA JOSHI

..... Plaintiff

Through: Mr. Pravin Anand, Mr. Dhruv Anand,
Ms. Udit Patro, Ms. Kavya
Mammen, Ms. Nimrat Singh, Adv.

versus

ABHISHEK RAY & ANR.

..... Defendants

Through: Mr. Saikrishna Rajgopal, Ms. Savni D
Endlaw & Ms. Snehima Jauhari,
Adv.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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04.01.2024

I.A. No.56/2024 (seeking extension of time for filing court fees)

1. This application has been filed by the plaintiff seeking extension of time for filing court fee.
2. It is stated by the counsel for the plaintiff that the court fees has already been applied for and the same shall be deposited within a week's time from today.
3. Directed accordingly.
4. The application stands disposed of.

I.A. No.53/2024 (seeking discovery, production, and inspection)

1. This application has been filed for directions to the defendant nos.1 and 2 for discovery and production on affidavit, details as mentioned in paragraph 2 of the present application.
2. Issue notice.



3. Ms. Savni D. Endlaw, Advocate who appears on behalf of defendant no.1 on advance notice, accepts notice and seeks time to file a reply to the present application. Let the same be filed within 4 weeks from today with a copy to the opposing counsel.

4. Notice of this application be also issued to defendant no.2, on steps being taken by the plaintiff through all permissible modes, who may also file reply within 4 weeks of service upon him.

5. List for completion of pleadings *qua* this application before the Registrar (Judicial) on 2nd April, 2024.

CS(COMM) 1/2024

1. Let the plaint be registered as a suit.

2. Ms. Savni D. Endlaw, Advocate who appears on behalf of defendant no.1 on advance notice, accepts notice.

3. Upon filing of process fee, issue summons to defendant no.2 by all permissible modes. Summons shall state that the written statement be filed by the defendants within 30 days from the date of receipt of summons. Along with the written statements, the defendants shall also file affidavits of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.

4. Liberty is given to the plaintiff to file replications within 15 days of receipt of the written statements. Along with the replications, if any, filed by the plaintiff, affidavit(s) of admission/denial of documents of the defendants be filed by the plaintiff, without which the replications shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

5. List before the Joint Registrar for marking of exhibits on 2nd April, 2024.



6. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

7. List before the Court for framing of issues thereafter.

I.A. No.54/2024 (seeking leave to file additional documents)

1. By this application under Order XI Rule 1(4), Code of Civil Procedure, 1908 (“CPC”) as applicable to commercial suits under the Commercial Courts Act, 2015, plaintiff seeks time to place on record additional documents.

2. The Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.

3. Application stands disposed of accordingly.

I.A. No.55/2024 (exemption)

1. Exemption is granted, subject to all just exceptions.

2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance within four weeks from today/before the next date of hearing.

3. Application stands disposed of accordingly.

I.A. No.52/2024 (Under Order XXXIX Rule 1 and 2, CPC)

1. By this application, the plaintiff prays as follows:

“i. An order of ex parte ad-interim injunction be passed restraining the Defendants, its partners, if any, officers, servants, agents, and representatives and anyone acting for or on their behalf from infringing the Plaintiff’s copyright in the lyrics in the song ‘Palko Ke Palne’ by the unauthorized use of the same as part of the film or in any manner whatsoever;

ii. An order directing the Defendants to immediately take down the song ‘Palko Ke Palne’ which continues to be made available on music streaming platforms/webpages specifically from the following links <https://www.youtube.com/watch?v=yaNwUw6Dwjo>, <https://www.hungama.com/song/palko-ke-palne/96196331/>,



<https://open.spotify.com/track/4XZCyUhH7xE6oZHAjpm67p>,
https://wynk.in/music/song/palko-kepalne/hu_8903246783558_INH412203472#install-app,
<https://music.apple.com/us/song/palko-kepalne/1663198787>, <https://www.jiosaavn.com/album/life-isgood/zuGHZQdpEvk>,
till such time she is fairly compensated for the use of her lyrics in the song, either jointly by the Defendant Nos. 1 and 2 or severally..”

2. It is the case of the plaintiff that she had penned the lyrics of the song ‘Palko Ke Palne’ which has featured as a part of a film ‘Life’s Good’. Defendant no.1 is the music composer of the sound track of the said film which was produced by defendant no.2. The plaintiff, it is stated, is a renowned personality and contributed to the arts and the cultural realm in India. Her poems have been used for lyrics of various other music albums in collaboration with eminent personalities. It is her case that in 2011, she had penned the lyrics of this song and shared the same with defendant no.1, who requested her to complete the remaining song and mentioned that the said song would fit with the theme of an upcoming film ‘Life’s Good’. She was initially informed that the said movie was to be released in 2011, however, subsequently could not be produced due to financial constraints of the film producer. No written agreement was entered into between the plaintiff and defendant no.1, as admitted by counsel for both the parties.

3. Cause of action arose in November, 2022 when the plaintiff chanced upon a video link on YouTube which was shared by defendant no.1 via WhatsApp communication. The link showed the said song being featured as a part of the said film, being the same film, which had been mentioned by defendant no.1 in 2011. It was discovered that the said film had been produced by defendant no.2 and came as a shock to the plaintiff since she had not been informed about her lyrics being finally used in the film; that too, after about a decade.



4. Legal notice was sent to both the defendants on 6th December, 2022; defendant no.1 responded to the same on 8th December, 2022; however, defendant no.2 did not submit any response thereto.

5. Plaintiff filed for pre-litigation mediation petition being Petition No.422/2023 on 4th October, 2023 before Delhi High Court Mediation & Conciliation Centre. Defendant no.1 appeared through the sittings of the said mediation however, the same was not successful. It is noted that defendant no.2, despite being served, did not appear in the mediation proceedings.

6. The contention of the plaintiff is that she is the author and first owner of the literary work, i.e., the lyrics of the song and therefore, is protected under Section 14(a) of the Copyright Act, 1957 (“the Act”). By using the lyrics as part of the said song, which has now been disseminated through a cinematograph film, as well as independently on music channels, the defendants are jointly liable for infringing the plaintiff’s copyright.

7. Counsel for defendant no.1, who appears on advance notice, however disputes the issue of infringement of copyright on the basis that they had indeed commissioned the artist, i.e., the plaintiff for lyrics of the said song and had incorporated it as part of the musical work produced by them; and thereafter, in their agreement with the film producer – defendant no.2, had supplied it for being used in the cinematograph film. It is stated by the counsel for defendant no.1 that this arrangement had been without any monetary consideration for the reason that the engagement was based on an understanding that the plaintiff would be provided a larger canvas for her work and would gain promotional benefit.

8. Without prejudice to the rights and contentions of the parties, it is *prima facie* clear that – *firstly*, the lyrics of the said song had indeed been penned by the plaintiff (at least as admitted by defendant no.1); *secondly*, the said song has been produced by defendant no.1 (as submitted by counsel for defendant no.1); *thirdly*, the said song has been used in the above-mentioned cinematograph film



produced by defendant no.2 (as submitted by defendant no.1); *fourthly*, the said film indeed had a theatrical release and additionally the said song is being promoted and disseminated through various music channels and other media; and *lastly*, the said song does credit the lyrics to the plaintiff.

9. In view of the same, considering that defendant no.2 has absented itself from the proceedings and chosen not to appear even in the pre-litigation mediation proceedings, and the rights of the plaintiff would finally have to be adjudicated through this suit, it would be apposite if the royalties which are being received by defendant no.2 and by any other party on their behalf, may be preserved, subject to the outcome of the present suit.

10. Accordingly, defendant no.2 and any person authorised on their behalf, is directed to maintain proper accounts of all royalties received on account of dissemination of the said song through all possible media. Defendant no.2 shall file an affidavit in this regard within a period of 3 weeks, with a copy to the parties to this suit, giving details of the date of release of the cinematograph film, utilisation of the song in question, various media in which said song has been disseminated, the terms on which said dissemination has been transacted, and the royalties that they have received till date of filing of the affidavit.

11. The defendants are also directed to ensure that the said song, through its dissemination, continues to credit the plaintiff for the lyrics of the song in order to preserve her moral rights in the said work.

12. List before this Court on 14th February, 2024.

13. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 4, 2024/sm/sc