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

Date of Decision: 6th July, 2022

+ **CS (COMM) 358/2018 & CC 181/2008**

ABHISHEK RAY Plaintiff

Through: Ms. Sneha Jain, Mr. Ranjeet Singh
Sidhu & Mr. Kuber Mahajan,
Advocates (M-9958393111)

versus

R. PAUL AND ORS. Defendants

Through: Mr. A.K. Jha, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Plaintiff- Mr. Abhishek Ray has filed the present suit for declaration and permanent injunction, rendition of accounts, damages, delivery up, etc. The suit is filed against four Defendants, namely, Mr. R. Paul (Defendant No.1), Mr. Michael Menezes (Defendant No.2), Showtimes Events (India) Pvt. Ltd. (Defendant No.3) and M/s The Storytellers (Defendant No.4).

2. As per the Complaint, the Plaintiff is a well-known music composer-singer and he has several prestigious albums both in Indian and in the international market. The profile of the Plaintiff is that he has been composing music for television channels including Doordarshan, Star, Sony, Zee, etc. The Plaintiff has composed music for more than 500 television serials aired on various channels. The feature films and documentaries for which the Plaintiff claims to have composed music are:

- *'HAASIL'*,
- *'MISSION MUMBAI'*,
- *'AHISTHA AHISTHA'*,
- *'PAL PAL DIL KE SAATH'*,
- *'MAHARAJA OF JODHPUR'*

3. Defendant No.3 - Showtimes Events (India) Pvt. Limited is a company run by Defendant No.1- Mr. Rohin Paul and Defendant No.2- Michael Menezes. Defendant No. 3 is engaged in the business of creating, staging and managing various events and shows in India and across the world. The said Defendant is also engaged in the entertainment industry. Defendant No.4- M/s The Storytellers is an entity engaged in the business of making ad films and is not a contesting party. The said Defendant has already been proceeded *ex parte vide* order dated 04th April, 2008. The case of the Plaintiff is that he composed, arranged, sung, recorded and produced a music album in September, 2004 called '*Kamasutra - Moods of Love*'. The album consisted of the following seven songs:

- i. *Yeb Kya Ho Raha Hai,*
- ii. *Behka Behka,*
- iii. *Mujme Hai Ek,*
- iv. *Kamasutra Theme,*
- v. *Dil ki Gufa Se,*
- vi. *Ke Tere Bin Saawan, and*
- vii. *Ishq To.*

4. The Plaintiff claims that all the seven tracks are his own compositions and were recorded in his own studio in Delhi. Various instruments recorded on different individual tracks were merged through a multi-track computerized recording platform and finally the audio album was created.

The compositions of the Plaintiff being original and the Plaintiff having composed and produced the album himself, it is the case of the Plaintiff that he is the author of the compositions and the sound recording as per Sections 2(d)(ii) and 2(d)(v) of the Copyright Act, 1957 (*hereinafter 'Act'*) and also the owner of the underlying works including the lyrics, the musical compositions, etc within the meaning of Section 17 of the Act.

5. According to the Plaintiff, Defendant No.2- Mr. Michael Menezes approached the Plaintiff in June 2005 and expressed interest in producing an international musical incorporating the music compositions contained in the album - '*Kamasutra - Moods of Love*'. The Plaintiff had earlier worked with Defendant No.3 company in the past as a composer and singer. Various meetings took place between the parties and Defendant Nos.1 to 3 agreed to produce the musical. It is the case of the Plaintiff that the Plaintiff merely agreed to assign the '*right to use*' the musical compositions to the Defendants for the proposed musical. All other rights in the sound recordings and music compositions were retained by the Plaintiff.

6. As a precursor to the production of the said musical, a promotional video was also recorded admittedly by Defendant Nos.1 to 3 which consisted of the Plaintiff's composition '*Behka Behka*'. The understanding, allegedly, was that the video would be used to promote the music album of the Plaintiff and also the musical as and when it is produced. The aforesaid arrangement was never formalised into a written agreement. The further understanding between the parties, as per the Plaintiff, was that a sum of Rs.30 lakhs would be paid by Defendant No.3 to the Plaintiff as consideration. However, only a sum of Rs.10 lakhs was paid. The remaining Rs.20 lakhs remained outstanding. This entire transaction was negotiated sometime between June,

2005 to July-August, 2006. Since no steps had been taken by the Defendants to produce the musical till September, 2006, the Plaintiff decided to launch its music album and accordingly approached Defendant No.3. However, Defendant No.3 imposed two counter conditions at that stage to allow the Plaintiff to use the promotional video. First, the Plaintiff gives Defendant No.3 an agreed percentage of the sales of the Plaintiff's albums. Second, to give Defendant No.3 credit as 'presenter' of the album. The Plaintiff then approached M/s Sagarika Music Pvt. Ltd. for releasing the sound recordings in an album titled- "*Kamasutra- Moods of Love*" both in CD and cassette form. According to the Plaintiff, he was agreeable with the conditions of Defendant No.3 and took this transaction forward with M/s Sagarika Music Pvt. Ltd. However, this position is disputed by the Defendants. The Plaintiff entered into a contract as per which 70% of the consideration as per the actual sale of the sound recording was to be paid to Defendant No.3.

7. Disputes arose between the parties when the Plaintiff launched the music album in November, 2006 by giving an advertisement in the Hindustan Times. On 8th November, 2006, a letter was written by Defendant No.3 to M/s. Sagarika claiming to be the producer of the music album and it was alleged that the Plaintiff had composed music for the Defendants for which he had been paid. The Defendants also filed criminal actions against the Plaintiff and also threatened contempt against M/s Sagarika Music Pvt. Ltd in a letter dated 23rd December, 2006. M/s Sagarika Music then intimated the Plaintiff that since there is a dispute as to the ownership of the music album, it would be unable to release the music album, unless and until an NOC is obtained from the Defendants. This led to a complete stalemate and though the launch itself took place, no CDs and cassettes of the album were released

into the market. Parties exchanged various letters between each other, however, to no avail. On one hand, the Defendants had filed a criminal complaint against the Plaintiff, the Plaintiff on the other hand sought declaration and injunction by way of the present suit. The reliefs sought in the suit are as under:

- a. Declare that the Plaintiff is the owner of Copyright in the music compositions, lyrics and sound recordings comprised in the album "Kamasutra - Moods of Love" containing songs 'Yeh Kya Ho Raha Hai..', 'Behka Behka...', 'Mujme Hai Ek...', 'Kamasutra Theme...', 'Dil Ki Gufa Se...', 'Ke Tere Bin Saawan..' and 'IshqTo...*
- b. Decree of Permanent Injunction restraining the Defendants, their principal officers, directors, agents, franchisees, servants and all others acting for and on their behalf, from directly or indirectly incorporating the music compositions and sound recordings of the plaintiff in respect of the songs 'Yeh Kya Ho Raha Hai..', 'Behka Behka...', 'Mujme Hai Ek...' 'Kamasutra Theme...', 'Dil Ki Gufa Se...', 'Ke Tere Bin Saawan..' and 'Ishq To...', and/or using any composition and/or sound recordings of the Plaintiff from the Album titled "Kamasutra - Moods of Love", either in respect of a musical, in the form of Audio and/or video, and/or in any other manner infringing the Copyright in the Plaintiff's said compositions and sound recordings;*
- c. Decree of Delivery up of all the impugned products being compact disks, or other storage media and including any CD Writers/Burners, or any other material infringing and/or aiding in the Infringement of the Copyright of the Plaintiff, lying in the possession of the Defendants and their principal officers, directors, agents, franchisees, servants etc;*
- d. Decree of Rendition of Accounts of profits illegally earned by the Defendants by reason of infringement of the Plaintiff's Copyright as aforesaid and a decree be passed against the Defendants in the exact sum of the*

amount so ascertained;
e. Decree for payment of Damages of Rs. 20,00,200 by the Defendants, in favour of the Plaintiff;
f. Decree of costs in the present proceedings be passed in favour of the Plaintiff and against the Defendants;
and
Any other and further orders, as this Hon'ble Court deems fit, proper and just in the facts and circumstances of the present case, may be passed in favour of the Plaintiff and against the Defendants.”

Submissions

8. Ms. Sneha Jain, Id. Counsel for the Plaintiff submits that in 2004 the Plaintiff started working on a music album. During the said period, the Plaintiff also worked with the Defendants on various projects. In June 2005, Defendant No.2 had approached the Plaintiff with a request to make an international musical based on the Plaintiff's music album. There was consensus between the parties and it was further agreed that a promotion video would be made for the musical which would also be used by the Plaintiff for the promotion of its music album. Ms, Jain, Id. Counsel, submits that a consideration of Rs. 30 lacs was promised to be paid by Defendant No.3 to the Plaintiff. However, out of it, only 10 lacs were paid. Also, the musical was not released by the Defendants.

9. In 2006, the Plaintiff sought to go ahead with the launch of his music album and entered into talks with the Defendants. The Defendants put forth two conditions to the Plaintiff which were both agreed to by the Plaintiff. Thereafter, the Plaintiff entered into a written contract with M/s Sagarika Music Pvt. Ltd. for the launch of the Plaintiff's album and 70% of total sales proceeds from the album were reserved for the Defendants. The album was

launched in 2007. However, the Defendants wrote letters to M/s Sagarika Music Pvt. Ltd. claiming to be the copyright owner of the music album. Because of the conduct of the Defendants, the release of the Plaintiff's album was shelved. The said album has not been released till date and no one company wants to release the Plaintiff's album till date. It is further her submission that neither the Defendants have pursued the criminal complaint filed by them nor led any evidence in the counter claim filed against the Plaintiff showing their *mala fides*.

10. Ms. Jain Id. Counsel, further submits that the Plaintiff is author of the work in terms of section 2(d)(ii) of the Act since he is the composer of the musical album. This fact is not even disputed by the Defendants. Moreover, as per section 17 of the Act, the Plaintiff would be the first owner of copyright in the music album. It is her submission that the Plaintiff had merely given the 'right to use' to the Defendants of the album for the musical vide an oral agreement. Moreover, there cannot be any valid assignment of copyright in any work unless it is in writing and signed by the assignor in view of section 19 of the Act. She submits that the Defendant no.1-3 caused huge loss to the Plaintiff as the music album did not get commercialised, the plaintiff had a loss of face with Defendant no.4 for no fault of his and hence the Plaintiff is also entitled to be compensated monetarily by way of damages.

11. Mr. A.K. Jha, Id. Counsel, appears for the Defendants and vehemently disputes the case of the Plaintiff. It is his submission that the music album was commissioned by the Defendants as part of the musical. It is for the said purpose, consideration of Rs. 10 lacs was paid to the Plaintiff by the Defendants. With the payment of 10 lacs, the copyright in the said album vested in the Plaintiff as soon as the album came into existence. It is further

submitted by the Id. Counsel for the Defendants that the parties were negotiating a written contract for the launch of the music album. However, the Plaintiff went behind the back of the Defendants and launched the album without the consent of the Defendant. The Defendants have suffered losses to the tune of Rs. 50 lacs which they had invested in the musical. It is submitted by the Id. Counsel for the Defendant that the counter claim was not pursued by the Defendant as there was some understanding arrived at between the Plaintiff and the Defendants.

Analysis

12. The present suit was first listed before the Court on 09th March, 2007. The Defendants entered appearance on 21st March, 2007. Since no written statement was filed by the Defendants by the said date, an interim injunction was granted against the Defendants on 17th April, 2007 in the following terms:

“By way of this application, plaintiff has sought injunction praying that the defendants, their principal officers, agents etc. be restrained from directly or indirectly in any manner interfering in the sale, distribution and marketing of the album titled "Kamasutra- Moods of Love" containing the songs 'Yeh Kya Ho Raha In-Hai', 'Behka Behka', Mujme Hai Ek', 'Kamasutra Theme', 'Dil Ki Gufa Se', ' Ke Tere Bin Saawan' and 'ishq to'. It is the case of the plaintiff that these songs contained in the album were written, composed, sung and recorded by the plaintiff, but the defendant was unnecessarily interfering in sale and distribution of the album on the ground that defendants have filed a criminal complaint against the plaintiff and defendant has right over these songs. Prima facie plaintiff has a good case and balance of convenience lies in favour of plaintiff.

In view of the fact that written statement has not been

filed despite opportunity, the application of the plaintiff is allowed. Defendants are restrained from interfering in any manner in release and sale of the album containing above songs. Defendants also restrained from using literary work, musical work and sound recordings comprised in the album, till further orders.”

13. The written statement thereafter filed by the Defendants 1-3 was taken on record on vide order dated 4th April, 2008. In the written statement, the case of Defendant Nos.1 to 3 is that the Defendants commissioned the music album of the Plaintiff. They also commissioned the musical by paying the sum of Rs.10 lakhs to the Plaintiff for creating the songs and music tracks for the above projects. The Defendants claimed invested more than Rs.50 lakhs into the entire project and the Plaintiff was not entitled to go behind the back of the Defendants and launch the music album through M/s Sagarika Music Pvt. Ltd. There was no written agreement between the parties and since the Defendant No.3 insisted on a formal agreement to be drawn up, while negotiations were going on, the Plaintiff decided to launch the music album. The Defendants only got to know about the launch through a news item published in Hindustan Times. It was at that stage that the Defendants took criminal action in view of the fact that the Defendants had paid money to the Plaintiff and also invested in the musical but could not earned a single penny from the music album. The Defendants’ case further is that the conduct the Plaintiff has resulted in huge loss to the Defendants of over Rs.50 lakhs. The Defendants also claim rights in the promotional video of *Kamasutra* and musical which used the Plaintiff’s work ‘*Behka Behka*’. The Defendants also alleged that the Plaintiff had no right to use the said video for his own purpose or for launching his music album. A counter claim bearing **CC No. 181/2008**

was also lodged by Defendant No.3 but was never pressed upon.

14. The following issues were framed by the Court in the suit on 29th September, 2008:

“1. Whether the plaintiff is the owner of the copy right of musical album. " Kamsutra-A music of Love"? OPP

2. Whether the plaintiff is entitled to the copy of the said musical album? OPP

3. Whether the plaintiff is entitled to claim rendition of account, injunction, declaration as alleged? OPP

4. Whether the plaintiff has invested any amount in the production of musical album? OPP

5. Whether the plaintiff can bring CD/DVD in the market without the consent of the defendant? OPP

6. Whether the suit is properly valued for the purpose of court fees and jurisdiction, if not to what effect? OPP

7. Whether the defendant has paid the settled remuneration to the plaintiff? OPD

8. Relief.”

15. Evidence was led on behalf of the Plaintiff, Mr. Abhishek Ray appeared as PW-1 and Mr. Rohin Paul appeared as Defendants’ witnesses. Both the said witnesses were cross-examined.

Summary of the evidence of the Plaintiff- Mr. Abhishek Ray (PW1)

16. PW1 in his evidence by way of an affidavit primarily reiterated the contents and allegations of the plaint. In his cross-examination, PW1 categorically asserted that he was the composer of the album and apart from composition of the album, the entire project was conceived, composed, sung, produced and recorded by him. In response to a suggestion that the music album was commissioned by the Defendants, PW1 stated as under:

“Q- Is it true that for a project of Kamsutra, the moods of love, you were commissioned by the defendant to

create a musical that is the songs and music tracks for the said album, i.e. Kamsutra, the moods of love?

Ans. It is incorrect. (Vol. I was already working on an album conceived by me, titled Kamsutra, Moods of love in the middle of the year 2004. Roughly around June, 2005, defendant/Show time Event had approached me and shown interest in using the songs of my album for an international musical of the same name.)”

17. PW1 also confirmed that there was no written contract with Defendant No.3 in respect of the musical as he had been working with the said Defendant in the past and it was always on a word-of-mouth basis. No contract was drawn between the parties. He admitted that the musical was to be choreographed by the Defendants and that storytellers had been engaged by the Defendants for creating the video on the song ‘Behka Behka’. PW1 also admitted that costs for the creation and production of the music album including the seven songs were borne by him. However, insofar as the costs pertaining to the video and other non-musical expenses were concerned, they were borne by the Defendants. In response to a question as to how PW1 was claiming financial loss of Rs.35 lakhs whereas in his evidence, his expenditure is admitted to be only Rs.4,02,287/-, PW1 stated that there are various losses apart from the expenses which are incurred, for example, composition charges, arrangement charges, studio charges, time spent by him, mixing mastering charges as also his own professional charges. Thus, apart from the external expenses which he incurred; PW1 claimed that he is entitled to at least Rs.35 lakhs for all these charges. PW1 claims this amount on the strength of the fact that he is a professional music composer and this is his only source of income.

18. In his cross examination, PW1 further admitted that he has received a

total payment of Rs.10 lakhs from the Defendants. PW1 denied that the entire project was financed by Defendant No.1 to 3 or that they are the owner of the copyright in the entire project. Insofar as the handover of the rights in the song / music tracks are concerned, PW1 categorically stated that he had agreed to only give the Defendants the 'right to use' the songs in the proposed musical 'Kamasutra – Moods of love'. He further asserted that he had never agreed to give away his own copyrights in his music album. He had also agreed to the Defendants shooting a promotional video on one of the songs and in return the Defendants would pay a sum of Rs.30 lakhs along with the right to use the said video for the promotion of his own album. In order to enable the Defendants to produce the promotional video, PW1 stated that, he had handed over the audio master without which the Defendants could not have even shot the promotional video on a song which was composed and sung by him.

19. On the distinction between the music album and musical, the cross-examination records as under:

“Q Is it correct that you had changed the name of the album in question from 'Musical of Love' to 'Moods of Love'?”

A It. is correct. Again said, name of the album from my side was 'Kamasutra Moods of Love' wherein all songs were composed, recorded, produced and sung by me along with other singers hired by me. Defendant no.3 was planning a musical called 'Kamasutra, a Musical of Loye' based on my concept, for which it had expressed interest in using all my aforesaid songs for setting up the said proposed musical project which comprised of inter alia a live stage performance with dancers, artists, opulent, light and sound for creating a spectacular effect. So, the aforesaid question put to me is incorrect.”

20. PW1 confirmed the contents of the written agreement between himself

and M/s Sagarika Music Pvt. Ltd. In response to a suggestion that he did not give the information about the release of the album through M/s Sagarika Pvt. Ltd. to Defendant Nos.1 to 3, PW1 stated that he had telephonic conversations with the Defendants about the said release. He also denied that there was any need for permission from Defendant Nos. 1 to 3 as the album belong to him and was produced by him. In response to the question that he had misled the Defendants, PW1 stated as under:

“Q I put it to you that in the aforesaid press conference organized in November 2006 you had misled when you stated that you were the owner of album 'Kamasutra, Moods of Love'.

A. In all the publicity print material released in connection with the said album, it was clearly mentioned on the top cover that 'Showtime Events Presents 'Kamasutra, Moods of Love by Abhishek Ray'. So it is amply clear from this that I had no intentions of bypassing the credit of the defendants though I had not been paid in full. Along with this in my contract with Sagarika Music Pvt Ltd, I had given 70% of the total share of proceeds from album sales to defendant no.3 and only kept 30% for myself. Therefore, I did not mislead as suggested to me.

It is true that in the contract executed between myself and M/s Sagarika Music Pvt Ltd it was mentioned that I had the copyright of the album 'Kamasutra, Moods of Love'. (Vol., it was an audio CD / cassette). It is incorrect to suggest that M/s Sagarika Pvt Ltd had asked me to produce a 'No Objection' from defendant no.3. (Vol., at the time of release of the aforesaid album Kamasutra, Moods, of Love, defendant no.3 sent an official mail as well as a number of phone calls to M/s Sagarika Pvt Ltd claiming that it was the absolute owner of the complete album and threatened of dire consequences if the album was released without its permission. At that stage M/s Sagarika Pvt Ltd asked

me to produce an No Objection Certificate from defendant no.3 regarding the video which was shot on one of my songs "Behka Behka"). I am not aware if any complaint was lodged by M/s Sagarika Music Pvt Ltd against defendant no.3 or not."

21. In respect of the rights in the audio album and the video, PW1 again asserted that the audio album's copyright belonged to him. However, the main marketing tool for release of the album was the video which shot on the song 'Behka Behka' by Defendant No.3. The video was meant to be use for promotion musical worldwide and also for the promotion of PW1's album. However, the Defendants by not given NOC to M/s Sagarika frustrated and hampered the efforts in releasing of the album. Since the marketing tool for the music album i.e., the video was with Defendant Nos.1 to 3 and they refuse to allow the launch, he had to withdraw the album from the market. He confirmed that 70% of the total share of proceeds from the album sales had to go to Defendant No.3 and 30% had to be retained by PW1. However, the authorship rights and the copyright in the songs vested with PW1. In the draft agreement between PW1 and Defendant No.3, both the parties had mutually decided to sharing the copyright of both the audio and the video, however, this was not agreeable to Defendant No.3 and the same was never signed.

Summary of the evidence of Defendant No.1- Mr. Rohin Paul (D1W1)

22. D1W1 in his evidence by way of an affidavit primarily reiterated the contents of the written statement. Most of the suggestions put by the Plaintiff's counsel in cross-examination to D1W1 suggesting that no steps were taken by the Defendants for showcasing and releasing the musical were denied by him. He confirmed that the promotional video of the musical was

made by the Defendants in the year 2006. D1W1 claimed that the Defendant Company incurred losses of about Rs.50 lakhs which was based on the investment made in the project. There was no book of accounts on record to establish such loss. D1W1 also confirmed that no suit or civil litigation was filed claiming such loss, but criminal proceedings were filed by the Defendant Company against the Plaintiff by lodging an FIR. D1W1 was not aware if any charge-sheet has been filed or if even summons was issued in the said complaint. D1W1 also confirmed that Defendant No.3 was in possession of only the master copy of the video production and not the master copy of the Plaintiff's copyrighted works. The Defendants found out about the launching of Plaintiff's songs through media only. The draft contract given by the Plaintiff was not signed by Defendant No.3 as according to D1W1, it was not the correct contract. D1W1 confirmed that the Plaintiff has not assigned its copyright in the music and song created by him to Defendant No.3. D1W1 refuted the suggestion that the Plaintiff had composed, arranged, sung, recorded, and engineered music for the songs in the present suit prior to its meetings regarding the musical.

23. D1W1 confirmed that he knew the Plaintiff for the last 20-22 years. He also confirmed that the Plaintiff has made music for various events of the clients of Defendant Nos.1 to 3. D1W1, after seeing the record, confirmed that the name of the company which was to hold the musical in London was 'Cole Kitchen, London'. He also confirmed that Plaintiff was not an employee of the Defendants. No agreement was drawn for creating the musical as he is a regular vendor engaged by the Defendants. Most agreements of the Defendants are oral. He further confirmed that the Plaintiff was engaged by the Defendants only for this international project. Defendant No.3 claimed

rights from Defendant No.4 in the video for the musical.

Findings

24. A perusal of the pleadings and evidence on record shows the following are the admitted facts between the parties:

- (1) The Plaintiff is the original composer, lyricist, producer and author of various songs contained in the album '*Kamasutra- Moods of Love*'.
- (2) Defendant Nos.1 to 3, apart from paying the sum of Rs.10 lakhs, did not have any other input in the production of the music album '*Kamasutra- Moods of Love*'.
- (3) Defendant Nos.1 to 3 intended to launch the musical '*Kamasutra- A Musical of Love*' towards which they produced the video. The rights in the said video were with Defendant Nos.1 to 3, however, the said video also consisted of various underlying works, which belong to the Plaintiff.
- (4) Insofar as the sum of Rs.30 lakhs is concerned, there is a dispute as to whether the sum of Rs.30 lakhs was agreed upon between the parties. However, the admitted position is the payment of Rs.10 lakhs was made by the Defendants to the Plaintiff. The said amount of Rs.10 lakhs remain with the Plaintiff and has not been returned.
- (5) No payment has been made by the Plaintiff for the production of the promotional video, which the Defendants produced as a precursor to the musical.
- (6) The drafts of the agreements for the musical and music album were exchanged. The main draft, which was almost agreed to except clause 2.2 of the said Agreement, clearly recognized that the Defendants

would produce the musical and the Plaintiff assigns only the sound recording of the album for the purpose of production of the musical. As per the draft agreement, wherein the only disputed portion by the Defendants was clause 2.2, the consideration payable was 85% of the profits from the sale of music tracks to Defendant No.3 and 15% to the Plaintiff. However, this agreement never came to be signed.

(7) Insofar as the correspondence is concerned, the letters show that around the time when the agreement was being negotiated and the launch of the music album was announced, the Defendants admittedly filed a criminal complaint and also alleged contempt of Court against M/s. Sagarika Music Pvt. Ltd. This led to the M/s. Sagarika Music Pvt. Ltd. shelving the release of the album of the Plaintiff and calling upon the Plaintiff to obtain NOC from Defendant Nos.1 to 3.

25. The above facts are not in dispute and are clearly gleanable from the record itself. The conclusion on facts, therefore, that can be drawn at this stage is that the rights in music album belong to the Plaintiff and the Plaintiff is the owner of all the underlying works and sound recording consisting of the album '*Kamasutra- Moods of Love*' as per Section 17 of the Act.

26. Insofar as the promotional video, which was produced for the musical, is concerned, partial rights may be owned by Defendant Nos.1 to 3. However, they do not have assignment of rights of the underlying works in the track '*BEHKA BEHKA*'. Thus, the video by itself, without the rights being in the underlying works, would be completely unusable by Defendant Nos.1 to 3.

27. The Plaintiff claims damages on the ground that the Plaintiff never intended to bypass Defendant Nos.1 to 3, as the agreement even with M/s Sagarika Music Pvt. Ltd. was to the effect that 70% of the profits would vest

with Defendant No.3. This is clear from a reading of clause 6.3 of the agreement dated 18th October, 2006. The said clause reads as under:

“6.3 The amount of consideration will be computed on a six monthly basis as on 31st March and on 30th September and will be payable to the Assignor by the 15th of May and the 15th of November of a given year on the basis of sales and receipt of those payments from the distributors. 70% of the consideration shall be payable in the name of M/s. Showtime Events India Pvt. Ltd., S-567, Greater Kailash II, New Delhi 110048.”

28. It, thus, appears to the Court that Defendant Nos.1 to 3 may have taken some sudden action doubting the *bona fides* of the Plaintiff by filing the criminal complaint and alleging contempt. However, the launch of the music album through M/s. Sagarika Music Pvt. Ltd. soured the relationships between the parties, though the Plaintiff may not have intended such a consequence. This entire dispute could have been easily avoided, had the Plaintiff entered into a tripartite agreement with Sagarika Music and Defendant No.3. However, unfortunately the events that conspired were to the contrary and the exact reason for the same is not clear from the evidence.

29. In view of the above pleadings and the evidence which has come on record, the video, which was produced by Defendant Nos.1 to 3 is of no commercial use or value to the Defendants. However, the Plaintiff having been original producer, lyricist and composer of the album '*Kamasutra-Moods of love*' is entitled to decree of declaration in terms of the paragraph 18(a) of the plaint. In view of this declaration, the Defendants and any other person acting for or on their behalf shall stand restrained from directly or indirectly incorporating the music compositions, underlying works, sound recordings in the song '*BEHKA BEHKA*' in any of their videos or musical.

Further, the Defendants shall not interfere in any manner with the Plaintiff's exploitation of the music album '*Kamasutra- Moods of Love*'.

30. Insofar as the decree of delivery up is concerned in view of the injunction granted, since no copy appears to have been made of the Plaintiff's album, the said relief is infructuous. The Plaintiff also seeks rendition of accounts of profits. However, Defendant Nos.1 to 3 have not produced any works incorporating the works of the Plaintiff. Thus, even this relief is not liable to be granted.

31. Insofar as the decree of damages is concerned, Defendant Nos.1 to 3 have already paid a sum of Rs.10 lakhs to the Plaintiff and there is evidence on record that out of the said amount, Rs.4 lakhs has been used by the Plaintiff for the purposes of expenses in creation of album and production of the album. The remaining amount of Rs.6 lakhs continues to be retained by the Plaintiff. It is directed that the said sum of Rs.6 lakhs would not be liable to be returned to the Defendants. Since the Plaintiff has also enjoyed the said amount for a long period, without any payment of interest, no further damages are liable to be granted in favour of the Plaintiff. Thus, it is made clear that no amount would be liable to be returned or refunded by the Plaintiff to the Defendant Nos.1 to 3.

32. In view of the above discussion, the issues framed by the Court in the suit vide order dated 29th September 2008 are answered in the following terms:

I. Whether the plaintiff is the owner of the copy right of musical album. "Kamsutra-A music of Love"? OPP

This issue is answered in the favour of the Plaintiff.

II. Whether the plaintiff is entitled to the copy (sic copyright) of the said musical album? OPP

This issue is repetitive. The Plaintiff is the owner of the copyright in the music album.

III. Whether the plaintiff is entitled to claim rendition of account, injunction, declaration as alleged? OPP

The Plaintiff is entitled to declaration and permanent injunction in terms of paragraph 29 of the above order. Insofar as rendition of accounts is concerned, since the Defendants did not launch any musical using the Plaintiff's works, rendition of accounts is not granted.

IV. Whether the plaintiff has invested any amount in the production of musical album? OPP

All the investment in the music album was made by the Plaintiff. However, the investment for making the video for the musical was made by the Defendant with the underlying work of the Plaintiff.

V. Whether the plaintiff can bring CD/DVD in the market without the consent of the defendant? OPP

In view of the Court's findings on Issue No.1 and 4, the Plaintiff is entitled to exploit the music album in the manner he chooses.

VI. Whether the suit is properly valued for the purpose of court fees and jurisdiction, if not to what effect? OPP

No submissions made by the parties.

VII. Whether the defendant has paid the settled remuneration to the plaintiff? OPD

The entire remuneration of 30 lacs which was agreed between the parties was not paid by the Defendants. However, a sum of Rs. 10 lacs was paid which was partially utilised by the Plaintiff. For reasons stated in paragraph 31 above, the said amount is no longer liable to be refunded to the Defendants. The Plaintiff is not entitled to any further sums.

VIII. Relief.

The Plaintiff is entitled to relief in terms of paragraphs 29, 30, and 31 above.

33. In the facts and circumstances of this case, there shall be no orders as to costs.
34. Decree sheet be drawn up in the above terms.
35. The suit is decreed accordingly. Counter claim being ***CC 181/2008*** is disposed of as not pressed. All applications are also disposed of.

भारतमेव जयते

**PRATHIBA M. SINGH
JUDGE**

JULY 6, 2022

Rahul/SK

(corrected & released on 15th July, 2022)