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

+ CS(COMM) 937/2023 & I.A. 26069/2023, I.A. 26070/2023,
I.A. 26071/2023, I.A. 26072/2023, I.A. 26073/2023

NOVEX COMMUNICATION PRIVATE LIMITED

..... Plaintiff

Through: Mr. C.M. Lall, Sr. Adv. with
Mr. Jasdeep Dhillon and Mr. Anirudh
Jamwal, Advs.

versus

RSVK RESTAURANT PRIVATE LIMITED Defendant

Through: None

+ CS(COMM) 939/2023 & I.A. 26084/2023, I.A. 26085/2023,
I.A. 26086/2023, I.A. 26087/2023, I.A. 26088/2023

NOVEX COMMUNICATIONS PRIVATE LIMITED

..... Plaintiff

Through: Mr. C.M. Lall, Sr. Adv. with
Mr. Jasdeep Dhillon and Mr. Anirudh
Jamwal, Advs.

versus

BEL CIBO HOSPITALITY PRIVATE LIMITED Defendant

Through: Mr. Yashoj Guglani, Adv.

+ CS(COMM) 940/2023 & I.A. 26089/2023, I.A. 26090/2023,
I.A. 26091/2023, I.A. 26092/2023, I.A. 26093/2023

NOVEX COMMUNICATIONS PRIVATE LIMITED

..... Plaintiff

Through: Mr. C.M.Lall, Sr. Adv. with
Mr. Jasdeep Dhillon and Mr. Anirudh
Jamwal, Advs.



versus

HOMESPOON FOOD INDUSTRIES PRIVATE LIMITED
..... Defendant

Through: None

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER
22.12.2023

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CS(COMM) 937/2023, CS(COMM) 939/2023 & CS(COMM) 940/2023

1. The plaintiff is the owner of copyright in a large repertoire of sound recordings, with respect to which it grants licenses under Section 30 of the Copyright Act, 1957, to persons who wish to play the recordings.

2. The defendant in these suits runs various restaurants and other outlets, at which locations the defendants are alleged to be playing recordings in which the plaintiff holds copyright, without obtaining any licence from the plaintiff.

3. Paras 22 to 26 of the plaint sets out their details in this regard and may be reproduced thus:

“22. That, on 09.11.2023, the Plaintiff was shocked to find out that the Defendant was playing the sound recordings of the Plaintiff at the said venue. That, at the said venue, the Defendant blatantly infringed the copyright of the Plaintiff by playing the sound recordings without the requisite authorisation.

23. That the details of the Plaintiffs sound recordings which were played by the Defendant at the said venue on 09.11.2023 without obtaining the requisite permissions are as follows:



S. No.	Label	Song	Movie
1.	ZEE	Bang Bang	Bang Bang
2.	ZEE	Kala Chashma	Baar Baar Dekho
3.	YRF	Jhoom Jo Pathaan	Pathaan
4.	YRF	Leke Prabhu Ka Naam	Tiger 3
5.	YRF	Besharam Rang	Pathaan

24. That the Plaintiff also has the video recordings dated 09.11.2023 of the said venue, wherein the blatant infringement of the Plaintiffs copyright is apparent. That the CD of the recordings of the said event are in the document part.

25. That the Plaintiff through its Advocates sent a Legal Notice to the Defendant on 27.11.2023 giving the details of the infringement and also the details of the songs played. The Defendant has been further called upon to immediately take the authorization/ licences for the said infringements and to cease and desist from playing the Plaintiff's sound recordings without taking the requisite licenses. The said Legal Notice dated 27.11.2023 is at Document part.

26. That the Defendant has not only failed to reply to the said legal notice but has also not given details of any authorization taken by it for playing the songs which are a part of the repertoire of the Plaintiff. Moreover, the Defendant has also failed to give any explanation for the unauthorised and illegal use of the sound recordings.”

4. Mr. Yashoj Guglani appears for the defendant in CS(COMM) 939/2023. He relies on Section 33 of the Copyright Act to contend that, as the plaintiff is not a registered copyrighted society, it cannot insist on a license being taken before its recordings are played.

5. I have already taken a view in my order dated 17 December 2021 and 31 July 2023 in CS (Comm) 671/2021 (*Phonographic Performance Limited v. Canvas Communication*), by virtue of



Section 30 of the Copyright Act, a person is entitled to insist upon a licence being taken from him before any recordings or other material in which such person holds copyright are exploited by others. I have consciously held that Section 33 and the proviso to Section 33 would not affect the right which is conferred by Section 30.

6. Following this, in similar matters, I have restrained the defendants from playing recordings in which the plaintiff holds copyright at any event conducted in their premises, without obtaining a licence from the plaintiff. One such order dated 20 October 2023, in CS (Comm) 770/2023 (*Novex Communication Private Limited v. Bharat Hotels Ltd.*) is at page 311 of the documents filed with the plaintiff.

7. The facts in that case are identical to those in the present.

8. Following the said order, let the plaint be registered as a suit. Issue summons in the suit.

9. Summons are accepted, on behalf of defendant, by Mr. Yashoj Guglani, in CS(COMM) 939/2023.

10. Let summons in other suits be served on other defendants by all modes.

11. Written statement, accompanied by affidavit of admission/denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who



may file replication thereto, accompanied by affidavit of admission/denial of the documents filed by the defendant within 30 days thereof.

12. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of the documents and marking of exhibits on 26 February 2024, whereafter the matter may be placed before the Court for case management hearing and further proceedings.

I.A. 26069/2023 (stay) in CS(COMM) 937/2023

I.A. 26084/2023 (stay) in CS(COMM) 939/2023

I.A. 26089/2023 (stay) in CS(COMM) 940/2023

13. These are applications by the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) whereby the plaintiff seeks interlocutory injunctive reliefs.

14. As the grievance of the plaintiff is that the defendants are continuing to play the recordings of the plaintiff in which the plaintiff holds copyright without obtaining any licence from them, this is a case of continuing infringement.

15. As such, unless *ad interim* injunctive orders are passed, the infringement would continue unchecked. Moreover, it is a matter of concern that, despite earlier injunction orders passed by this Court, such infringing activities are continuing, and the copyright holders are being constrained to approach this Court repeatedly.



16. In that view of the matter, keeping in mind the principles of balance of convenience and the alleged copyright infringement to which the plaintiff is subjected on a daily basis, failure to grant *ad interim* injunction as sought at this stage would subject the petitioner to irreparable loss.

17. As such, issue notice, returnable before the Court on 28 February 2024.

18. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto within four weeks thereof.

19. As such, till the next date of hearing, the defendants, as well as all others acting on their behalf shall stand restrained from using, playing, exploiting or otherwise publicly performing, communicating or transmitting, in any manner, any of the sound recordings in which the plaintiff holds copyright, without obtaining a license from the plaintiff. The recordings in which the plaintiff has copyright are available at the plaintiff's website www.novex.in.

20. Compliance with Order XXXIX Rule 3 of the CPC be effected within one week from today.

21. *Dasti.*

I.A. 26070/2023 (Under Section 12A) in CS(COMM) 937/2023

I.A. 26085/2023 (Under Section 12A) in CS(COMM) 939/2023

I.A. 26090/2023 (Under Section 12A) in CS(COMM) 940/2023



22. As this is a case in which there is alleged continuing copyright infringement, the avenue of pre-institution mediation is really not available for exploitation. As such, the request for exemption from pre-institution mediation is granted.

23. The applications are allowed.

I.A. 26071/2023(exemption) in CS(COMM) 937/2023
I.A. 26086/2023 (exemption) in CS(COMM) 939/2023
I.A. 26091/2023 (exemption) in CS(COMM) 940/2023

24. Subject to the plaintiff filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks from today, exemption is granted for the present.

25. The application is disposed of.

I.A. 26072/2023 (for placing DVD on record) in CS(COMM) 937/2023
I.A. 26087/2023(for placing DVD on record) in CS(COMM) 939/2023
I.A. 26092/2023(for placing DVD on record) in CS(COMM) 940/2023

26. Subject to the copies thereof being furnished to the defendants, the plaintiff is permitted to place material on record by way of pen drive.

27. The application stands disposed of.

I.A. 26073/2023 (under Section 149 of CPC) in CS(COMM)



937/2023

I.A. 26088/2023 (under Section 149 of CPC) in CS(COMM)

939/2023

I.A. 26093/2023 (under Section 149 of CPC) in CS(COMM)

940/2023

28. For the reasons stated therein, the plaintiff is permitted to file court fee and requisite process fee within two weeks from today.

29. The applications are disposed of.

C. HARI SHANKAR, J

DECEMBER 22, 2023

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Click here to check corrigendum, if any