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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 773/2023, I.As. 21148/2023, 21149/2023, 21150/2023,**
21151/2023, 21152/2023, 21153/2023 & 21154/2023

USTAD FAIYAZ WASIFUDDIN DAGAR Plaintiff

Through: Mr. Neel Mason, Mr. Arjun Harkauli,
Ms. Aditi Umapathy & Ms. Ujjawal
Bhargava, Advs. (M: 9971586598)

versus

MR. A.R. RAHMAN & ORS. Defendants

Through: Mr. Kaushik Moitra, Mr. Anurag
Tandon & Mr. Pundreek Dwivedi,
Adv. for D-1.(M: 8874994309)
Mr. P.S. Raman, Sr. Adv. with Ms.
Sneha Jain, Mr. Vivek Ayyagari, Ms.
Ramya Ramkumar & Mr. Kuber
Mahajan, Advs for D-2 & 3
(M:9958393111)
Mr. Harsh Kaushik, Mr. Rahul Dhote,
Mr. Shwetank Tripathi, Ms. Ruddhi
Bhalekar, Mr. Gaurav Suryavanshi,
Mr. Kunal Gupta & Mr. Harsh
Prakash, Advs. for D-4. (M:
9910893068)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **20.10.2023**

1. This hearing has been done through hybrid mode.

I.As. 21150/2023 & 21151/2023 (for exemption)

2. This is an application filed by the Plaintiff seeking exemption from filing true typed/better copies of documents with proper margins, etc. Original documents shall be produced/filed at the time of Admission/Denial, if sought,



strictly as per the provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (*hereinafter, 'Commercial Courts Act'*) and the DHC (Original Side) Rules, 2018.

3. Exemption is allowed, subject to all just exceptions. Accordingly, the application is disposed of.

I.A. 21149/2023 (for additional documents)

4. This is an application filed by the Plaintiff seeking leave to file additional documents under the Commercial Courts Act. 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 and the DHC (Original Side) Rules, 2018.

5. Application is disposed of.

I.A. 21152/2023 (for leave to file document)

6. This application has been filed seeking leave to file documents in a USB drive.

7. The pen drives be placed on record by the Plaintiff with advance copy to the Defendants and the files in the same be loaded/uploaded with the electronic record of the Court. Application is disposed of.

I.A. 21153/2023 (u/S 12A of the Commercial Courts Act)

8. This is an application filed by the Plaintiff seeking exemption instituting pre-litigation mediation.

9. Considering the fact that Plaintiff has reached out to the Defendants repeatedly to resolve the disputes, the exemption is granted. Application is disposed of.



CS(COMM) 773/2023

10. Let the plaint be registered as a suit.
11. Issue summons to the Defendants through all modes upon the filing of Process Fee.
12. The summons to the Defendants shall indicate that the written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
13. Liberty is given to the Plaintiff to file the replication within 15 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication 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.
14. List before the Joint Registrar for marking of exhibits on 14th December, 2023. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.
15. List before Court on 7th November, 2023 on the top of board.

I.A.21148/2023 (u/O XXXIX Rules 1 & 2 CPC) & I.A. 21154/2023 (u/O II Rule 2(3) CPC)

16. Issue notice in the application.
17. The present dispute is between two well-known artists. The Plaintiff is Ustad Faiyaz Wasifuddin Dagar - a descendant of the family lineage of Dhrupad vocalists who have been singers from the Dagar Gharana for 20 generations. Their style of singing has been described as the Dagarvani style



and is based in the Dhrupad genre of classical music. Both the Plaintiff's father and uncle passed away in 1989 and 1994 respectively. The Plaintiff has continued the family tradition and also himself is a composer and artist of the said Gharana. The Plaintiff has been vested all the rights in all the compositions of his father - Ustad Faiyaz Wasifuddin Dagar and uncle-Ustad N. Zahiruddin Dagar by way of arrangement entered into with all the legal heirs. The Plaintiff himself has been awarded the Padma Shri in the year 2010.

18. One of the earliest compositions of the Plaintiff's father and uncle is stated to be the 'Shiv Stuti' which was sung in *Raag Adana* in the 1970s. As per the Plaintiff, it was for the first time composed in the 1970s and was performed by his father and uncle in various international concerts including the one held at the Royal Tropical Institute in Amsterdam on 22nd June, 1978. The 'Shiv Stuti' composed in the Adana Raag is also part of the album which was launched by the Plaintiff's predecessors titled *Shiva Mahadeva* by the Dagar Brothers by the music company PAN records. The CD cover and the inlay card, etc., for the said album have been placed on record which would show that the 'Shiv Stuti' was the part of the said album. The album itself is titled '**Ustad Faiyaz Wasifuddin Dagar - Dagar: The Pathway**'.

19. The Defendant No.1 is the well-known Indian music composer Mr. A.R. Rahman. Defendant No. 2 - Madras Talkies which is owned by Mr. Mani Ratnam and Defendant No. 3 - Lyca Productions Private Limited are co-producers of the Film – *Ponniyin Selvan - 2 (PS2)*. Defendant No. 4 - Tips Industries Limited have been assigned the music of the said film. Defendant No. 5 - Mr. Shivam Bharadwaj and Defendant No. 6 - Mr. Arman Ali Dehlvi are former disciples of the Plaintiff who have sung the song in question i.e. 'Veera Raj Veera' of the said film.



20. In the present suit, the Plaintiff prays for an injunction against the said Defendants. The grievance of the Plaintiff is that in the film PS2, a song by the name 'Veera Raj Veera' has been filmed, which according to the Plaintiff is based on the 'Shiv Stuti' composition in which the Plaintiff owns rights. The said song in the film has been sung by Defendant Nos. 5 and 6.

21. The case of the Plaintiff is that although the lyrics of the song 'Veera Raj Veera' are different, the *taal* and the beat are identical and the composition itself is identical to the Plaintiff's original composition based on the *Raag Adana*. In order to establish this, a chart has been filed comparing the musical notations along with the affidavit of the Plaintiff.

22. Ld. counsel for the Plaintiff - Mr. Neel Mason has pointed out that Plaintiff learned of the said song in April 2023 when it was released for the first time in social media and on television, etc. Immediately, thereafter, Plaintiff wrote a personal letter to Defendant No.1 on 13th April 2023 wherein it was brought to the notice of Defendant No.1 that the 'Shiv Stuti' composition has been imitated in the 'Veera Raj Veera' song. No reply was sent by Defendant No.1. There was no response thereafter except a brief telephonic conversation between Plaintiff and Defendant No.1, wherein he is stated to have been assured that the manner in which the dispute can be resolved would be communicated. However, no such reply was received from Defendant No. 1. Defendant No.2 thereafter replied to the legal notice and stated that the claim of copyright infringement is misconceived as the same is a traditional song. Further, the allegations of Defendant No.2 in the said reply were that the attempt of Plaintiff is to earn monetarily and an attempt to gain publicity. Thereafter, Plaintiff sent an email dated 20th April 2023 through counsel intimating the Defendant No. 1 of the infringement of the Plaintiff's



copyright and moral rights of the Junior Dagar Brothers i.e. the Plaintiff's father and uncle. But there was no reply.

23. In view thereof, the Plaintiff filed the present suit.

24. Today, Id. Counsel On behalf of Defendant No.1, submits that the suit papers have been served upon him recently and he would need to seek instructions in the matter. On behalf of Defendant No.2 and 3, Mr. Raman, Id. Sr. counsel submits that the composition for the "Veera Raj Veera" song was given by Defendant No.1 for incorporation into the film. In any event, Defendant Nos. 2 and 3 are willing to attempt an amicable resolution.

25. On behalf of Defendant No. 4 it is submitted that there is no originality claimed in the composition and the mere manner of singing cannot be the subject matter of copyright.

26. The Court has today heard the two compositions. At this stage, since Defendant No. 1 is yet to make submissions, the Court does not wish to make any observations in this regard. However, in terms of the Copyright Act, 1957, musical work is defined in Section 2(p) as under:

"2.[(p) "musical work" means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music;]"

27. Considering the definition of musical work, there can be an infringement of copyright in a musical work even without the words, the lyrics and the action being similar.

28. The Plaintiff has attempted to establish infringement with the chart consisting of the notations and *taal* and the beat. The Defendant No.1 would

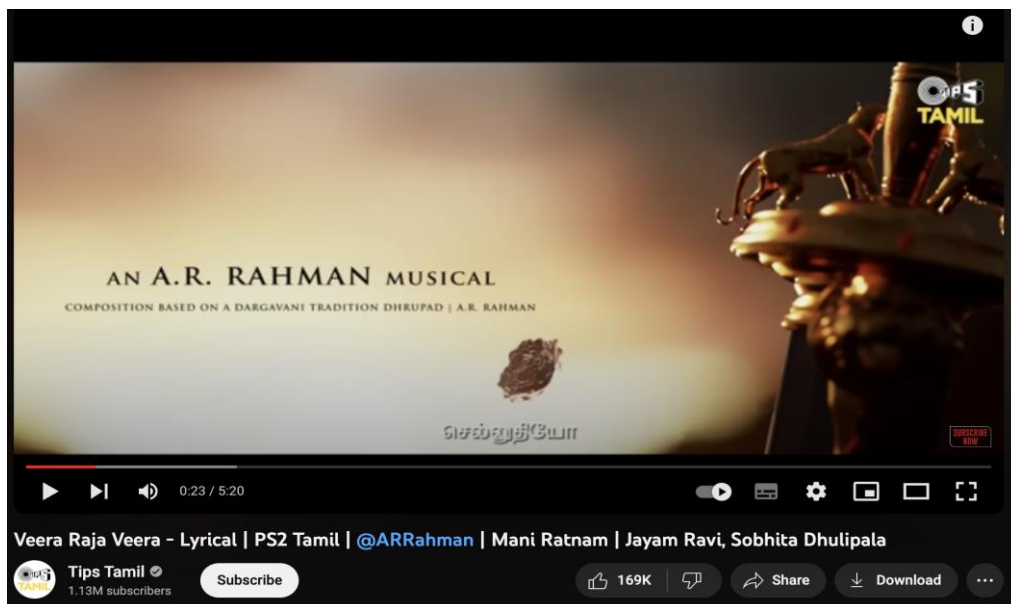


be required to respond to the same.

29. At this stage, Id. Counsel for Plaintiff points out that Defendant No.1 has been given credit in respect of this song to the effect that the composition is based on Dagarvani tradition dhrupad. The same reads as under:



However, it is, further pointed out that in another YouTube video, there is an error in the said credit that is given for the composition of the song. The same is as under:





In the above video instead of Dagarvani the word Dargavani has been used.

30. After having heard Id. Counsels for the parties and after hearing the two compositions that were played before the Court today, in order to consider the *ad-interim* relief that is prayed for the following directions are issued:

i. Defendant No.1 shall produce the raw recording of ‘Veera Raj Veera’ song along with its reply to the notation chart which has been handed over by Plaintiff today.

ii. Insofar as the YouTube credit is concerned, the typographical error where the *Dagarvani* is mentioned as *Dargavani* shall be corrected within the next 48 hours, and the corrected credit shall be reflected on the You Tub video.

31. The Defendants are permitted to file a reply on or before 1st November 2023. Advance copies of the same shall be served to all parties.

32. List on 7th November 2023 on the top of the board.

PRATHIBA M. SINGH, J.

OCTOBER 20, 2023

dj/kt