2025:BHC-OS:8516

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL IP SUIT NO.101 OF 2012

Rupali P. Shah … Plaintiff
Vs.
Adani Wilmer Limited and others … Defendants

Mr. Ashish Kamat, Senior Advocate a/w. Mr. Rohan Kadam, Ms, Shirley Mody and Ms. Rucha Vaidya i/b. M/s. K. Ashar & Co. for Plaintiff.

Mr. Naresh Thacker a/w. Mr. Shailendra Poria and Mr. Samarth Saxena i/b. Economic Laws Practice for Defendant No.1.

Dr. Veerendra Tulzapurkar, Senior Advocate a/w. Mr. Gaurav Mehta, Mr.Chakrapani Misra, Mr. Jigar Parmar and Ms. Pranali Vyas i/b. Khaitan & Co. for Defendant No.2.

CORAM : MANISH PITALE, J.
RESERVED ON : 13TH MARCH, 2025
PRONOUNCED ON: 11TH JUNE, 2025

ORDER :

. The present suit concerns the claim of the plaintiff in respect of certain musical works forming part of cinematographic films produced by Ralhan Productions of which the late father of the plaintiff was the owner and subsequently the plaintiff took charge of the same. The plaintiff claims that defendant Nos.1 and 2, who are the contesting defendants, need to be restrained from exploiting such works. It is her case that on a proper reading of the agreements, whereby certain rights were assigned to the said contesting defendants, after specific time period, they were no longer authorized to continue to exploit the works. In that context, ancillary reliefs are also sought by the plaintiff against the contesting defendant Nos.1 and 2. Defendant Nos.3, 4 and 5 are not contesting defendants and hence this suit has been resisted only by defendant Nos.1 and 2.

2. The chronology of events leading to filing of the present suit is required to be referred to, before taking into consideration the rival submissions in the context of the issues framed by this Court in the present suit.

3. O. P. Ralhan, late father of the plaintiff, who was the owner of Ralhan Productions, undertook production of cinematographic films, which also contained musical works and songs. Between 1963 and 1983, he produced 7 films, being the producer and owner of such creative works associated with the films. The plaintiff was born on 19.08.1964 and as per the Will left by the said O. P. Ralhan, which was probated in the year 2013, the plaintiff became the owner of productions undertaken by her father.

4. The father of the plaintiff executed agreements on 19.12.1962, 19.01.1965, 24.04.1967, 07.01.1970, 19.12.1972, 15.01.1977 and 27.04.1980 concerning the said films, thereby assigning to the predecessor of the defendant No.2 rights in the works of songs and recordings forming part of the seven films.

5. In the year 1999, the said O. P. Ralhan i.e. the father of the plaintiff died leaving behind his Will, bequeathing rights in properties including the said works in favour of the plaintiff. The Will was probated in the year 2013.

6. In the years 2004 and 2005, the plaintiff addressed certain communications to the defendant No.2 asking for royalty statements and payments of royalty under the aforesaid assignment agreements executed in favour of the predecessor of the defendant No.2. It is to be noted that there is no dispute about the fact that the rights assigned to the predecessor of defendant No.2 were in turn assigned to the defendant No.2. On 21.07.2009, the plaintiff addressed a letter to the defendant

No.2, acknowledging the payment of Rs.50,000/- towards part payment of royalty and further requested for a statement of accounts from the accounting year 2002-03 onwards.

7. On 09.01.2006, the defendant No.2 addressed a letter to the plaintiff referring to the aforementioned agreements covering the seven films and proposed certain terms for sharing of revenue from non-physical alternative mediums of communication of the works and sound recordings that formed part of the said seven agreements. The contesting parties have made detailed submissions on their respective interpretations of the said letter dated 09.01.2006. It would be necessary to interpret the said document in order to reach conclusions with regard to the claims made by the plaintiff and the resistance raised to the same on behalf of the contesting defendants. On 18.01.2006, the plaintiff responded to the said letter by simply stating that it was forwarded to legal advisors and that an appropriate response would be given after receiving legal advice. It is relevant to note here that while stating so, the plaintiff further stated that until execution of amendments to the agreements, the existing agreements shall be subsisting and binding.

8. After a gap of more than four years, on 12.05.2010, the plaintiff sent a letter through her advocate to the defendant No.2 informing that none of the said agreements were valid and subsisting, further claiming that defendant No.2 had failed and neglected in furnishing statement of royalty payable from time to time. The plaintiff called upon the defendant No.2 to furnish a complete statement of accounts for royalty payable along with 18% interest payable on such pending royalty and further called upon the defendant No.2 to cease and desist from dealing with the aforesaid rights.

9. On 31.05.2010, the defendant No.2 sent a letter through advocates in response to the aforesaid claims made by the plaintiff. The defendant

No.2 refuted the claims of the plaintiff and stated that the agreements were valid and subsisting, further stating that a statement of account was being sent separately. In this context, there was exchange of communications between the said parties.

10. In December 2011, the plaintiff came across a commercial advertisement on television issued by defendant No.1, wherein the said defendant had used a song from the film 'Talash', which formed part of the aforesaid seven films. In that context, on 05.12.2011, the plaintiff issued a cease and desist notice to the defendant No.1 asking it to refrain from using the said song. In response, on 13.12.2011, the defendant No.1 informed the plaintiff by way of a letter that it had obtained licence from defendant No.2 to use the said song on a representation made by defendant No.2 about having rights in the said song from the film 'Talash'. In this context, the plaintiff also sent communications to the defendant No.2 and on 11.01.2012, the defendant No.2, through its advocates, informed the plaintiff that it was the absolute owner of the copyright in sound recordings and the underlying musical and literary works of the film 'Talash' on the basis of the agreement concerning the said film and that, it had exclusive rights to exploit the same.

11. In this backdrop, on 01.03.2012, the plaintiff filed the present suit, praying for perpetual injunction restraining defendant Nos.1 and 2 from infringing upon the copyright of the plaintiff in the said songs, musical works and musical rights arising out of the films produced by O. P. Ralhan, the details of which were stated in paragraph 3 of the plaint; a further perpetual injunction restraining defendant No.2 from creating third party rights in the said works concerning the specified cinematographic films; an order against defendant Nos.1 and 2 to pay a sum of Rs.10,00,00,000/-; an order directing the said defendants to render true and faithful account of all the profits made by them by

exploiting the said works and to pay such amount with interest @18% p.a.; an order directing the said defendants to disclose on oath all agreements / arrangements entered into by them with regard to the said works and a direction to the said defendants to deliver up for destruction, all the material pertaining to the said works. The plaintiff also moved notice of motion for temporary injunction in the present suit.

12. By judgement and order dated 08.05.2012, a learned Single Judge of this Court dismissed the notice of motion. In the said judgement and order, *prima facie* findings were given against the plaintiff by holding that, she had failed to demonstrate how the said agreements could be said to have expired or that, the contesting defendants could not claim any right in the said works. It was also found that the clauses of the agreements demonstrated that the parties to the same had always understood that the agreements conferred right in a separate identifiable work i.e. sound recording. The defendants filed their written statements and thereafter, by an order dated 20.03.2013, ten issues were framed in the suit, in the context of which the parties led their evidence. The oral and documentary evidence tendered by the parties was completed and taken on record. The suit was ready for final hearing and accordingly, it was finally heard.

13. By the said order dated 20.03.2013, this Court had framed the following ten issues in the suit:-

> "1) Whether the Plaintiff proves that the songs stated in Paragraph No.3 of the Plaint are from the cinematographic films produced by Mr.O. P. Ralhan being the owner of the copyright therein?
>
> 2) Whether the Plaintiff proves that the Defendants have infringed the copyright belonging to the estate of Mr. O. P. Ralhan?
>
> 3) Whether the Defendant No.1 proves to be a licensee in respect of the song titled 'Meri Duniya Hai Maa Tere Aanchal Mein' as claimed in Paragraph No.1 of the Written Statement?

4) Whether the Defendant No.2 proves that it has perpetual rights to exploit the music in the songs belonging to the estate of Mr. O. P. Ralhan in any formats as claimed in Paragraph Nos.6 and 11 of the Written Statement?

5) Whether the Defendant No.2 proves that it has perpetual rights to grant license to others for the use of the songs belonging to the estate of Mr.O. P. Ralhan as claimed in Paragraph No.6 of the Written Statement?

6) Whether the Defendants prove that the Plaintiff is guilty of suppressio veri and suggestio falsi as claimed in Paragraph No.4 of the Written Statement on behalf of Defendant No.2 and Paragraph No.5 of the Written Statement on behalf of the Defendant No.1?

7) Whether the Defendant No.2 proves that they have timely paid royalty to the Plaintiff as claimed in Paragraph No.8 of the Written Statement and that the said royalty is also for the license granted by them to the Defendant No.1?

8) Whether the Plaintiff is entitled to any damages as claimed in the Suit?

9) Whether the Plaintiff is entitled to accounts of profits as claimed in the Suit?

10) What Order? What Relief?"

14. Mr. Ashish Kamat, learned senior counsel and Mr. Rohan Kadam, learned counsel appeared on behalf of the plaintiff and submitted that the issues framed in the present suit deserve to be answered in favour of the plaintiff and against the contesting defendants. It was submitted that issue No.1 deserves to be answered in the affirmative in favour of the plaintiff, for the reason that there is no dispute about the fact that the predecessor of the plaintiff i.e. O. P. Ralhan was the original producer and owner of the copyright, who had executed the said agreements assigning rights in favour of the predecessor of defendant No.2 and eventually in the defendant No.2 itself. It was further submitted that issue Nos.2, 4 and 5 ought to be considered together as they are connected issues and they concern the question as to whether the plaintiff is justified in claiming that the contesting defendants have

infringed upon the copyrights in the said works. It was submitted that the said issues deserve to be answered in favour of the plaintiff as four out of the aforesaid seven agreements were not even produced by defendant No.2 while it never denied that rights in the said works were claimed on the basis of such agreements. It was claimed that the written statement of defendant No.2 clearly gave admissions that ought to be held against it and failure to produce some of the agreements ought to lead to an adverse inference against the defendant No.2.

15. It was further submitted that even if the pleaded case of defendant No.2 was to be taken into account, the agreement of the year 1967 was only for a period of two years, purportedly extended for a further period of one year, while the aforementioned film 'Talash' was released in the year 1969 and in the absence of cogent evidence to show extension of the agreement by a period of one year, contentions raised on behalf of the defendant No.2, by placing reliance on the aforementioned agreement, are also unsustainable. Thereafter, the learned counsel appearing for the plaintiff made detailed submissions on the interpretation of the aforementioned agreement of the year 1967 to claim that the defendant No.2, at best, could claim rights in 'record' as defined in the agreement read with the definition of 'work' found in the Copyright Act, 1957. It was submitted that since only physical recording mediums were available at the time when the agreement of the year 1967 was executed, even if the clauses of the said agreement were to be interpreted in a wider manner, the defendant No.2 could claim right of exploitation of the records / works under the said agreement only in physical mediums. There was no question of right of exploitation by non-physical mediums including digital medium, thereby demonstrating that by doing so, the defendant No.2 had infringed upon the copyright of the plaintiff. It was asserted that the clauses of the agreement demonstrated meeting of minds with regard to manufacture and sale of

gramophone records and such other physical mediums known at the time when the agreement was executed. In this context, reference was made to Section 8 of the Transfer of Property Act, 1882, to claim that O. P. Ralhan could have and did transfer only such right in the intellectual property as was available at the time when the agreement was executed.

16. In order to support the aforesaid argument, reference was made to the amendments brought about in the Copyright Act in the years 1983, 1994 and 2012, emphasizing upon the fact that the expression 'sound recording' became part of the Copyright Act only by way of an amendment in the year 1994. It was emphasized that after the said amendment, sound recording became medium agnostic and hence it was possible to record works even on non-physical mediums. Much emphasis was placed on Sections 13, 14, 16, 18 and 19 of the Copyright Act as are existing today after the amendment in the year 2012. It was submitted that *proviso* to Section 18 of the Copyright Act, added by way of amendment, sufficiently made it clear that the contesting defendants cannot claim any rights in non-physical mediums.

17. It was further submitted that the letter dated 09.01.2006 sent by defendant No.2 to the plaintiff clearly showed an admission on the part of defendant No.2 that the said agreements did not cover non-physical mediums and that, only physical records / plates were contemplated in such agreements. The modifications and amendments proposed by defendant No.2 clearly support the contentions of the plaintiff and therefore, the contesting defendants cannot turn around to deny the same. In this context, much emphasis was placed on judgement of the 2nd Circuit Court in the case of *Cohen Vs. Paramount Pictures Corporation* (**845 F.2d 851**) and judgement of the Madras High Court in the case of *Raj Video Vision Vs. K. Mohan Krishnan*, **1998-2-L.W.718**. It was submitted that the aforesaid judgements laid down that such rights, that

were not even in contemplation when the subject agreement was executed, cannot be said to have been assigned. It was submitted that unless the subject agreement contains words like 'by any means now or hereafter known', it would not be appropriate to hold that rights that came into being much later also stood assigned by such an agreement. It was emphasized that Section 14 of the Copyright Act, read with other relevant provisions specifically lays down that any such right is subject to the provisions of the Copyright Act and hence, it is conditional upon the same. In this regard, reliance was placed on the judgement of the Supreme Court in the case of *Adani Gas Ltd. Vs. Union of India and others*, **(2022) 5 SCC 210**. By referring to *proviso* to Section 18 of the Copyright Act, it was submitted that the same confers a substantive right and that as per settled law, also recognized by the Supreme Court in the case of *Dattatraya Govind Mahajan and others Vs. State of Maharashtra and another*, **(1977) 2 SCC 548**, a proviso can also confer a substantive right.

18. It was further submitted that in the first place, the defendant No.2 had no right to exploit the works through non-physical mediums at any point in time. In any case, after the amendment of the year 2012 in the Copyright Act, the said defendant cannot rely upon the said agreements for exploitation of the rights in any non-physical or digital medium. It was submitted that in that sense, it could be said that the amendment was retroactive in nature and in that context, reliance was placed on the judgements of the Supreme Court in the cases of *K. S. Paripoornan Vs. State of Kerala*, **(1994) 5 SCC 593** and *Padma Srinivasan Vs. Premier Insurance Co. Ltd.,* **(1982) 1 SCC 613** as also the judgement of this Court in the case of *Kingfisher Airlines Ltd. Vs. CCI*, **2010 SCC OnLine Bom.2186**.

19. It was further submitted that in any case, defendant No.2 had no

right to permit the defendant No.1, by issuing a licence, to incorporate the record / sound track in a visual advertisement to create a new cinematographic work, even under the subject agreement of the year 1967. In this regard, reference was made to the provisions of the Copyright Act as they existed when the said agreement was executed.

20. On the basis of the aforesaid contentions, it was submitted on behalf of the plaintiff that issue Nos.2, 4 and 5 ought to be answered in favour of the plaintiff.

21. As regards issue No.3, it was submitted that defendant No.1 is not entitled to rely upon the licence agreement dated 22.11.2011 executed by the defendant No.2 in its favour. This was simply for the reason that when defendant No.2 itself was not entitled to copyright in the song in question, it could not have executed the licence in favour of the defendant No.1 and that too for synchronizing the song in a visual advertisement of the defendant No.1. On this basis, it was submitted that issue No.3 ought to be answered against defendant No.1 and in favour of the plaintiff.

22. As regards issue No.6, it was submitted that the plaintiff had clearly stated that she did not have a copy of the agreement of the year 1967. It was also stated that the plaintiff had no personal knowledge as she was born in the year 1964 and she had admitted in cross-examination that she learned about the said agreement and other such agreements only through the letter dated 09.01.2006 sent by the defendant No.2. Thus, there is no question of any suppression on the part of the plaintiff and the said issue ought to be answered against the contesting defendants and in favour of the plaintiff.

23. As regards issue No.7, it was submitted that the defendant No.2 has miserably failed to prove timely payment of royalty to the plaintiff.

It was submitted that mere marking of a document would not dispense with its proof and in the light of the fact that the witness of defendant No.2 in this regard had conceded that he had no personal knowledge of transfer of any amounts, the evidence led by defendant No.2 in this regard, clearly fell short of proving payment of royalty. On this basis, it was submitted that this issue ought to be answered against the defendant No.2.

24. As regards issue Nos.8, 9 and 10, it was submitted that this Court ought to decree the suit in terms of the prayers made in the plaint and that sufficient material was placed on record by the plaintiff to be paid damages apart from account of profits illegally earned by the contesting defendants by infringing upon the copyright of the plaintiff in the subject works. On this basis, it was submitted that the suit may be decreed with costs.

25. On the other hand, Dr. Veerendra Tulzapurkar, learned senior counsel appearing for defendant No.2 submitted that in the present case, the contentions, orally made before this Court on behalf of the plaintiff, are beyond the pleadings on record. It was submitted that what has been pleaded, has not been argued and what has been argued, has not been pleaded. In this context, attention of this Court was specifically invited to paragraphs 5, 7, 12, 13 and 14 of the plaint.

26. It was emphasized that the pleadings on record, particularly in the above-mentioned paragraphs of the plaint, demonstrated that the case of the plaintiff, in the present suit, is that the subject agreements assigning rights in the works concerning the seven films operated for a specific period of time and upon expiry of the same, the defendant No.2 stood disentitled from exercising such assigned rights. But, this has not been argued on behalf of the plaintiff and all kinds of submissions have been made with regard to the rights being assigned only for physical mediums

and exploitation through non-physical mediums, including digital medium, cannot be undertaken by the contesting defendants.

27. It was submitted that the stated case of the plaintiff was that, with efflux of time and the expiry of the subject agreements, exploitation of the works by defendant No.2 amounted to infringement, but during arguments, no submissions were made in support of such a stated case. According to the learned senior counsel for the defendant No.2, if the plaintiff had indeed pleaded such a case pertaining to physical medium, record, plate and in that context, assignment of rights only concerning physical mediums, the contesting defendants would also have been able to place on record appropriate pleadings to resist the same. It was further submitted that even if there was some evidence sought to be placed on record on behalf of the plaintiff to support arguments that have no basis in the pleading, such evidence, if at all, has to be ignored. In support of the aforesaid contentions, reliance was placed on judgements of the Supreme Court in the case of *Udhav Singh Vs. Madhav Rao Scindia*, **(1977) 1 SCC 511**; *Ram Sarup Gupta (dead) by LRs Vs. Bishun Narain Inter College and others*, **(1987) 2 SCC 555**; and *Mohammed Abdul Wahid Vs. Nilofer and another*, **(2024) 2 SCC 144**.

28. On this basis, it was submitted that all such oral submissions made on behalf of the plaintiff, particularly in the context of issue Nos.2, 4 and 5, ought to be rejected outright.

29. It was submitted that without prejudice to the aforesaid submission, it could be demonstrated on the basis of the material on record that the plaintiff has failed to make out a case for infringement of copyright. It was submitted that the original owner i.e. O. P. Ralhan had assigned the rights in the said works in perpetuity to the predecessor of defendant No.2 and hence, the defendant No.2 has records of the aforesaid films that were produced during the time period when the

agreements were executed. In other words, the plaintiff cannot claim that the assignment of the rights was for a limited period and exploitation of the same, beyond the limited period, would amount to infringement of copyright.

30. Thereafter, the learned senior counsel appearing for defendant No.2 referred to the clauses of the agreements, particularly the agreement dated 24.04.1967, to contend that the clauses have to be construed as a whole and that, upon a proper interpretation of the same, it becomes clear that the defendant No.2 was and is entitled to exploit the copyrightable work, by all means, and that, the restriction being read into the agreement on behalf of the plaintiff is not sustainable. Much emphasis was placed on the oral and documentary material available on record to show that the original owner i.e. O. P. Ralhan as well as his successor i.e. the plaintiff herein always treated assignment of rights in perpetuity and not for a limited period. In this regard, reference was made to the Will dated 04.09.1998 of the said O. P. Ralhan, whereby the rights in the said works were included in the Schedule of Assets as also the fact that the said O. P. Ralhan and thereafter the plaintiff herself had accepted payments from the defendant No.2 towards royalty. It was submitted that the conduct of parties, as regards interpretation of the agreements, assumes significance and it can be a factor assisting the Court in reaching conclusions as regards the true purport of the clauses of the subject agreements.

31. In support of the aforesaid submissions, the learned senior counsel appearing for the defendant No.2 relied upon the following judgements:-

a. *Ramkishorelal and another Vs. Kamal Narayan*, **1962 SCC OnLine SC 113**;
b. *Namburi Basava Subrahmanyam Vs. Alapati Hyma Vathi and others*, **(1996) 9 SCC 388**;
c. *State of Orissa and another Vs. Damodar Das*, **(1996) 2 SCC**

216;

d. *M. Arul Jothi Vs. Lajja Bal*, **(2000) 3 SCC 723**; and

e. *Prentice Hall India Pvt. Ltd. Vs. Prentice Hall Inc. and others*, **2002 SCC OnLine Del.549**.

32. It was further submitted that the words of a deed executed for consideration, as per settled law, are to be construed in favour of the grantee. On this basis, it was submitted that the wide purport of some of the clauses of the subject agreements, particularly agreement dated 24.04.1967, in respect of which counsel for the rival parties had made elaborate submissions, shows that the plaintiff cannot claim any infringement of copyright by the contesting defendants, particularly defendant No.2. In support of the aforesaid submission, reliance was placed on the judgements of the Supreme Court in the case of *Delhi Development Authority Vs. Durga Chand Kaushish*, **(1973) 2 SCC 825** and *Sahebzada Mohammad Kamgarh Shah Vs. Jagdish Chandra Deo Dhabal Deb and others*, **1960 SCC OnLine SC 107**.

33. It was further submitted that when an interim order decides a pure question of law, the interpretation and findings given in such an order can be binding on the Court even at a later stage at the time of final hearing. In this context, reference was made to the judgement and order dated 08.05.2012 passed by the learned Single Judge of this Court, rejecting the notice of motion seeking interim reliefs. It was submitted that the findings given therein support the contentions raised on behalf of defendant No.2. It was submitted that in the said order, it was specifically found that the terms of the agreement sufficiently demonstrated that sound recording was subject matter of the copyrightable material, which had been assigned in favour of defendant No.2. Consequently, its exploitation, by all means, was well within the rights assigned to defendant No.2 and therefore, the said order dismissing the notice of motion ought to be taken into consideration by

this Court. In support of the said submission, reliance was placed on the judgements of the Supreme Court in the cases of *SK. Bhikan Vs. Mehamoodabee*, **(2017) 5 SCC 127**; *S. Ramachandra Rao Vs. S. Nagabhushana Rao and others*, **2022 SCC OnLine SC 1460**; and *Arjun Singh Vs. Mohindra Kumar and others*, **[1964] 5 S.C.R. 946**.

34. It was further submitted that the subject agreements ought to be interpreted in terms of the law as it existed at the time of execution of the said agreements. It was submitted that when the agreements were executed, the Copyright Act, 1957 was in vogue, and therefore, the plaintiff is not justified in relying upon subsequent amendments, particularly the amendments brought about in the year 2012, in support of her contentions. By referring to the provisions of the Copyright Act as they stood at the time of execution of the agreements, it was submitted that the clauses of the agreements sufficiently demonstrated the wide nature of the assignment of copyrightable material in favour of defendant No.2.

35. As regards emphasis placed on the letter dated 09.01.2006 on behalf of the plaintiff to support her contentions, it was submitted that the said letter was being misconstrued by the plaintiff. There was no question of any admission on the part of the defendant No.2 with regard to the nature of assignment. Specific reference was made to that part of the letter, wherein it was asserted on behalf of the defendant No.2 that the entire right to exploit the works and sound recordings through any medium did vest in it. It was submitted that the said letter was addressed to the plaintiff only with a view to further streamline the terms for sharing of revenue with artists / producers upon communication of the subject works through non-physical mediums, including digital medium. On this basis, it was submitted that there was no question of any admission made on behalf of defendant No.2.

36. The learned senior counsel appearing for defendant No.2 further relied upon certain responses given by the plaintiff in her cross-examination to emphasize that royalty was always being paid till the plaintiff refused to accept the same, and therefore, no adverse inference can be drawn against the defendant No.2 in that regard. It was further submitted that the plaintiff cannot claim that due to non-production of certain documents, an adverse inference should be drawn against the defendant No.2. It was submitted that the said documents were clearly referred to between the parties and detailed submissions were made with regard to the agreements on record, with no indication that the provisions or clauses in the other documents did not contain similar / identical provisions or clauses. In any case, it was submitted that the original owner O. P. Ralhan had bequeathed the rights under the said agreements on the basis of the nature of assignment of the copyrightable material. On this basis, it was submitted that the issues framed in the present suit ought to be decided against the plaintiff and in favour of the contesting defendants.

37. Mr. Naresh Thacker, learned counsel appearing for defendant No.1 supported and reiterated the submissions made on behalf of the defendant No.2. It was submitted that the submissions made orally on behalf of the plaintiff were not relatable to the pleadings on record and in the absence of the pleadings, this Court ought not to consider such submissions. It was further submitted that the conduct of the plaintiff was such that there was acquiescence and therefore, the plaintiff could not raise the ground of infringement of copyright. In this regard, the learned counsel appearing for defendant No.1 referred to the chronology of events, in order to submit that the plaintiff was clearly aware of alleged infringement and yet, she chose to file the suit in the year 2012, by which time, she had also received and accepted royalty payments for exploitation of the copyrightable material through physical and non-

physical mediums.

38. It was further submitted that insofar as defendant No.1 is concerned, there was no question of it being aware about copyright claimed by the plaintiff and its infringement by the acts undertaken by the said defendant. On this basis, it was submitted that in any case, the plaintiff cannot claim any relief against the defendant No.1. In this context, reference was also made to the licence agreement dated 22.11.2011, executed in favour of defendant No.1 by the defendant No.2. It was further submitted that the defendant No.2 had represented that it had copyright in the said material, and therefore, there was no reason for the defendant No.1 to be hauled up for the alleged infringement of copyright by the plaintiff.

39. It was further submitted that the plaintiff, in the present case, had led no evidence at all with regard to the aspect of damages and in the absence of evidence, there was no question of awarding damages to the plaintiff. In any case, it was submitted that the licence issued to the defendant No.1 had expired in the year 2012 itself and therefore, the prayer for injunction against the said defendant was rendered infructuous. On this basis, it was submitted that the suit deserved to be dismissed.

40. This Court has considered the rival submissions in the light of the pleadings on record and the oral as well as documentary evidence led by the rival parties. Defendant Nos.1 and 2 are the only contesting defendants in the present case.

41. At the outset, this Court finds that issue No.1 can be decided without much discussion, simply for the reason that none of the contesting defendants have disputed the claim that O. P. Ralhan was the producer of the said films and consequently, owner of the copyright in

the material that was the subject matter of the agreements, concerning the said films. The contesting defendants are resisting the claims made by the plaintiff on the basis of the assignment of rights in the copyrightable material by O. P. Ralhan and the controversy between the parties is focussed on the true purport of the material on record showing assignment of such rights. Therefore, issue No.1 is answered by holding that O. P. Ralhan, being the producer of the cinematographic films, of which the songs formed part, was the original owner and held copyright therein.

42. But, the heart of the matter and the crux of the dispute between the plaintiff and the contesting defendants pertains to issue Nos.2, 4 and 5. The learned counsel appearing for the rival parties have made elaborate submissions in that regard and hence, this Court has considered in detail the said submissions in the backdrop of the pleadings as well as the oral and documentary evidence on record.

43. The central question pertains to the allegation of infringement of copyright by the contesting defendants, particularly defendant No.2 in the facts and circumstances of the present case. This Court is of the opinion that when the plaint is perused, it is indeed found that the emphasis in the plaint, while alleging infringement, was on the agreements being effective for a specific time period and upon expiry of the same, further exploitation of the copyrightable material by the contesting defendants gave cause of action to file the suit. But, in the elaborate submissions made on behalf of the plaintiff, there was no reference to the said central theory propounded in the plaint.

44. A perusal of paragraphs 5, 7, 12, 13 and 14 of the plaint would show that, according to the plaintiff, after the period specified in the agreements, including the extended period, had expired, with efflux of time, the defendant No.2 could not have exploited the aforesaid works.

But, in the oral submissions made on behalf of the plaintiff, the entire emphasis was on the assignment of rights only in physical medium and that exploitation of the same through non-physical medium / digital medium amounted to infringement of copyright. There was no reference to the expiry of the agreements and the effect on the rights assigned to defendant No.2 with efflux of time. In that light, this Court finds substance in the contention raised on behalf of the contesting defendants that what has been argued, has not been pleaded and what has been pleaded, has not been argued on behalf of the plaintiff. In that context, reliance placed on behalf of the defendant No.2 on the judgements of the Supreme Court in the cases of **Ram Sarup Gupta (dead) by LRs Vs. Bishun Narain Inter College and others** (*supra*) and **Mohammed Abdul Wahid Vs. Nilofer and another** *(supra)* appears to be justified. In the said judgements, the Supreme Court has observed that the object and purpose of the pleadings is to enable the adversary party to know the case it has to meet, this being a part of the concept of fair trial. It has been laid down that a party cannot be allowed to argue what has not been pleaded as the other side must know the contours of the case that are required to be met. In the case of **Udhav Singh Vs. Madhav Rao Scindia** *(supra)*, it is laid down that if issues of fact are raised without pleadings, the other side is likely to be taken by surprise. But if a pure question of law is sought to be raised, the same can be permitted during the course of trial.

45. This Court finds that the pleadings of facts made in the plaint on behalf of the plaintiff clearly project her case to be of expiry of the time periods in the agreements and with efflux of time, the defendant No.2 being disentitled to exploit the copyrightable works. This was certainly not argued before this Court at the stage of final hearing. Instead, it was claimed that the assignment of rights was only pertaining to a particular medium and not otherwise. The contesting defendants would have been

facilitated with an opportunity to contest such a case if it had been pleaded and an opportunity would have been available to lead evidence in that regard. But, even if the stand taken at the stage of final hearing on behalf of the plaintiff is to be treated as one concerning a question of law pertaining to interpretation of clauses of the agreements and other documents on record, it can be said that an attempt has been made on behalf of the plaintiff to spring a surprise on the contesting defendants at the stage of final hearing.

46. In any case, this Court finds substance in the contention raised on behalf of the contesting defendants that the assignment of rights in the subject works was in perpetuity and the restriction of time period was only to indicate that such rights were perpetually assigned in the context of works that were created within the said time period. Although the aspect of the assignment being limited to two years or extendable to three years was not specifically argued on behalf of the plaintiff, the pleadings on record in the plaint indicate such a case of the plaintiff, which this Court is unable to accept.

47. In this backdrop, this Court is inclined to undertake the exercise of examining the rival submissions in the context of the case set up on behalf of the plaintiff in the oral submissions made at the stage of final hearing. It is to be noted that the defendants, without prejudice to their initial submission, also made an endeavor to meet the aforesaid case sought to be set up on behalf of the plaintiff.

48. In the context of examining the rival submissions, it will be necessary to consider the clauses of the agreements. Elaborate submissions were made in the context of the clauses of the agreement dated 24.04.1967. There cannot be any quarrel with the proposition laid down by the Supreme Court in its judgements in the cases of **Namburi Basava Subrahmanyam Vs. Alapati Hyma Vathi and others** *(supra);*

State of Orissa and another Vs. Damodar Das *(supra);* **Arul Jothi Vs. Lajja Bal** *(supra)* and **Ramkishorelal and another Vs. Kamal Narayan** *(supra)*, wherein it has been laid down that while interpreting a contract or agreement, the intention of the parties is to be gathered from the terms of such contract; that all the clauses of such a contract are to be considered while interpreting the same; and that effect must be given to every word and every clause of such contract.

49. Since much emphasis was placed by the learned counsel appearing for the rival parties on the clauses contained in the agreement dated 24.04.1967, this Court has perused all the clauses of the said agreement. All such clauses will have to be appreciated, interpreted and construed together, so as to understand the true intention of the parties. Clause 1(a) of the agreement specifies that the word 'work' used in the agreement would have the same meaning as assigned under Section 2(y)(i) of the Copyright Act, as it then stood. The word 'record' was specifically defined as a double-sided disc record, a magnetic tape, or any other sound bearing contrivance or appliance reproducing performance or performances. Clause 4, apart from referring to the words 'recorded tapes' significantly refers to the words 'sound tracks' and / or other works and utilization of such sound tracks. The said clause also refers to gramophone records derived from sound tracks and clause 5 also refers to the said words. Clause 6 of the agreement specifies the manner in which the revenue would be shared and it does refer to records. Clause 7 of the agreement indicates that the assignment pertains to gramophone recording rights in all works to be recorded or re-recorded. Clause 10 of the agreement assumes great significance in the context of the rival submissions made on behalf of the parties. Clause 10 of the agreement dated 24.04.1967 reads as follows:-

> "10. The Company shall be the owner of the original plate within the meaning of The Copyright Act 1957 and any

> extensions or modifications thereof of each title recorded or re-recorded under the provisions of this Agreement at the time when such plate shall be made. The Company shall also be entitled to the sole right of production, reproduction, sale, use and performance (including broadcasting) throughout the world by any and every means whatsoever of the records of the works performed by the artistes and musicians etc. under this Agreement. The Company shall in its absolute discretion be entitled to authorise any other persons, firms or corporations in any part of the world to manufacture, sell and / or catalogue records of all or any of the titles recorded or re-recorded under the provisions of this Agreement when royalties shall become payable to the Clients as mentioned in Clauses 6 and 8 hereof."

50. In the above-quoted clause, it is specifically recorded that the assignee would be entitled to the sole rights, *inter alia*, of use and performance (including broadcasting) throughout the world by any and every means whatsoever of the records of the works. This Court is of the opinion that the use of the aforementioned words in the above-quoted clause 10 of the agreement make it abundantly clear that the assignee had the right to exploit the works by all means although at the time of execution of the agreement, such works were recorded in gramophone records. This Court is unable to read the limitation only to physical mediums as canvassed on behalf of the plaintiff. It is to be noted that the said agreement is to be interpreted on the basis of the provisions of law contained in the Copyright Act, 1957 as it stood in the year 1967 when the agreement was executed. Reference to original plate and gramophone record etc. in the agreement, by specifically providing for the right in the assignee to use and broadcast such copyrightable material by any and every means whatsoever, demonstrates that the assignor assigned wide-ranging rights in favour of the assignee.

51. The arguments made on behalf of the plaintiff are based on expressions like 'sound recording' etc. that were added in the Copyright Act by subsequent amendments and it is claimed that since the

expression ‘sound recording’ did not find mention in the Copyright Act, 1957, when the agreement was executed, it cannot be assumed that rights in sound recording were assigned. This Court is unable to accept the said argument, for the reason that the agreement itself assigned to the assignee, the sole right of using and broadcasting throughout the world by any means and every means whatsoever of the copyrightable work, created by the original owner. The substance contained in the work being nothing other than sound, it would be inappropriate to hold that such substance was never assigned to the assignee.

52. In fact, in the judgement and order dated 08.05.2012, whereby the learned Single Judge of this Court dismissed the notice of motion filed by the plaintiff seeking interim reliefs, a finding was rendered that the parties to the agreement always understood that the right in a separate identifiable work i.e. sound recording was conferred on the assignee. In this context, it would be relevant to refer to the judgements relied upon by the defendant No.2 in the cases of **SK. Bhikan Vs. Mehamoodabee** *(supra)*, **S. Ramachandra Rao Vs. S. Nagabhushana Rao and others** *(supra)* and **Arjun Singh Vs. Mohindra Kumar and others** *(supra)*. But, applicability of the said position of law would turn on the aspect as to whether the interim judgement and order dated 08.05.2012 passed by this Court did or did not decide a pure question of law. It is relevant to note that in the said interim judgement and order of this Court, dismissing the notice of motion, in paragraph 27, it was recorded that, both the sides agreed that in the present matter, the question was of interpretation of the agreement dated 24.04.1967. The interpretation of a document can certainly give rise to a question of law and therefore, to that extent, there appears to be substance in the contention raised on behalf of defendant No.2 that the emphatic findings rendered in the judgement and order dated 08.05.2012, could be said to be binding.

53. In any case, the findings rendered therein can be taken into consideration and they do not deserve to be completely ignored, only because a notice of motion at interim stage was decided by this Court. There is substance in the contention raised on behalf of defendant No.2 that the purport of the agreement, on appreciation of the clauses contained therein, does lead to a conclusion that the assignee under the said agreement was assigned wide-ranging rights regarding exploitation of the copyrightable material, which could not be limited to physical medium and that, it could certainly be exploited in other mediums also. In this context, the learned counsel for the plaintiff had placed much emphasis on the judgement of the Circuit Court of USA in the case of **Cohen Vs. Paramount Pictures Corporation** *(supra)*. In the said case, the Court came to a conclusion that in view of the subject document falling for interpretation, the assignee could not claim right of exploitation in a new medium. It was indicated that the document itself should contain appropriate language whereby the assignee could claim right of exploitation by means that would develop in the future. There could be no doubt that on the basis of the nature of the document falling for interpretation before a particular Court, findings would be rendered appropriately and that, if the position being applied to another document does not disturb the position of law or the case can be distinguishable on facts, the applicability of the judgement would vary.

54. In the present case, the above-quoted clause 10, which uses the words ‘by any and every means whatsoever’, according to this Court, sufficiently grants wide-ranging rights to the assignee and the position of law laid down in the aforesaid case of **Cohen Vs. Paramount Pictures Corporation** *(supra)* cannot come in the way of the defendant No.2 herein. The limitation only to physical medium insisted upon by the plaintiff in the facts and circumstances of the present case does not appear to be justified on a proper interpretation of the clauses of the

agreement. Similarly, the judgement of the Madras High Court in the case of **Raj Video Vision Vs. K. Mohan Krishnan** *(supra)* cannot take the case of the plaintiff any further. Apart from the fact that the said judgement is at best of persuasive value of this Court, the same is factually distinguishable. The aforesaid case concerned assignment of negative rights of a picture to the assignee and the question was as to whether video rights were available for the assignee. In the context of the document assigning rights, in the facts and circumstances of the said case, the Court came to a conclusion that limited rights were assigned and that the assignee could not claim wider rights in the copyright. But, as noted hereinabove, the language used in the above-quoted clause of the agreement is extremely wide-ranging and therefore, the plaintiff cannot claim that the assignment was limited to physical medium and exploitation by the contesting defendants by means of non-physical mediums amounted to infringement.

55. There is also substance in the contention raised on behalf of the defendant No.2 that the conduct of the parties, in the context of the document in question, also assumes significance and it can be a tool for understanding the manner in which the agreement was to be worked out as per the acts undertaken by the parties themselves. In the present case, the original owner O. P. Ralhan and subsequently, the plaintiff accepted royalty payments. It is to be noted that O. P. Ralhan, in his Will, specifically bequeathed the aforesaid ‘property’ to the plaintiff. It was argued on behalf of the plaintiff that the original owner could have bequeathed only that property which he owned. If that be so, it appears that the original owner i.e. O. P. Ralhan himself believed that the rights assigned under the subject agreements were for perpetuity and it would be incongruous to hold that even though wide-ranging clauses were included in the subject agreements for assigning the rights in the copyrightable material, limitation had to be read into the same as

claimed by the plaintiff. It is also relevant to note that royalty payments were made from time to time by the defendant No.2 and they were accepted by the original owner i.e. O. P. Ralhan and even by the plaintiff. Although much emphasis was placed on the answers given in the cross-examination by the witness of defendant No.2 as regards royalty payments made, since admission is the best form of proof, the response given by the plaintiff herself in her cross-examination assumes significance. It is a matter of fact that in response to a particular question, the plaintiff conceded that royalty payments were received upto a certain point in time. In fact, in the letter dated 09.01.2006 addressed to defendant No.2, the plaintiff herself had conceded that royalty payments were received. The documents on record also referred to payments for non-physical exploitation of the works, which further indicates that the limitation of physical medium, being insisted upon by the plaintiff, is unacceptable, particularly in the light of the conduct of the plaintiff herself and also her predecessor.

56. This Court is of the opinion that the conduct of the parties, being taken into consideration as a relevant factor for interpretation of the subject agreement, would show that wide-ranging rights were assigned to the defendant No.2 for exploitation of the copyrightable material, and therefore, the limitation of physical medium for exploitation of the rights being insisted upon by the plaintiff, is misconceived.

57. In this context, emphasis placed on the letter dated 09.01.2006 sent by the defendant No.2 to the plaintiff is also misconceived, particularly when the said document does not show any admission on the part of the defendant No.2 that the assignment of rights was limited to physical medium. There is substance in the contention raised on behalf of defendant No.2 that in the said very letter dated 09.01.2006, the defendant No.2 had emphatically stated that the entire right to exploit

works and sound recordings through any medium vested in it. Such a statement indeed shows that the aforementioned letter cannot be used by the plaintiff to claim that the defendant No.2 had admitted that the subject agreements had assigned limited rights to the defendant No.2, which were required to be elaborated and widened by modifications and amendments. In fact, in the said letter, the defendant No.2 expressed that revenue from non-physical sources should be shared with artists / producers in a manner conducive to all. Therefore, the said letter is nothing but an attempt on the part of the defendant No.2 to formalize and particularize revenue sharing model which would accrue to the benefit of all concerned parties. Hence, the said letter cannot be said to be an admission of limited assigned rights under the subject agreement.

58. The plaintiff placed much emphasis on the effect of *proviso* to Section 18 of the Copyright Act, introduced by the amendment in the year 2012. In this context, reference was also made to the various provisions of the Copyright Act, upon amendments brought about in the years 1983, 1994 and 2012. But, the agreements in question and the clauses contained therein, divulging the intention of the contracting parties, have to be interpreted on the basis of the provisions of the Copyright Act, 1957, as it stood when the agreements were executed. It is in the backdrop of the statute as it stood that the parties voluntarily executed the agreements, which assigned wide-ranging rights in favour of the assignee. This Court is unable to accept the contention of the plaintiff that introduction of the expression ‘sound recording’ by the amendment in the year 1994 made a radical difference to the present case, and that sound recording is medium agnostic. According to the plaintiff, this made a world of difference to the statute and the consequent *inter se* relationship between the parties in the context of the agreements executed between them. In the same manner, emphasis was placed on the *proviso* introduced to Section 18 of the Copyright Act by

claiming that reference to medium, not existing at the time of the assignment, rendered the contentions raised on behalf of the defendant No.2 unsustainable. This Court is of the opinion that the parties voluntarily entered into the aforementioned agreements giving wide-ranging rights to the assignee by using words such as 'by any and every means whatsoever', thereby signifying that rights were assigned without any limitations and hence rights crystallized between the parties cannot be undone by relying upon subsequent amendment of the statute.

59. This Court is unable to agree with the plaintiff with regard to the aspect of retrospectivity and retroactivity of provisions and the judgements relied upon in the said context in the cases of **K. S. Paripoornan Vs. State of Kerala** *(supra)*, **Padma Srinivasan Vs. Premier Insurance Co. Ltd.** *(supra)* and **Kingfisher Airlines Ltd. Vs. CCI** (*supra*) cannot be of much assistance.

60. This Court is of the opinion that in the light of the aforementioned reasoning adopted by this Court, reliance placed on the other judgements recorded in the submissions made on behalf of the plaintiff can also not be of much assistance to the plaintiff.

61. In view of the above, this Court is of the opinion that issue Nos.2, 4 and 5 deserve to be answered in favour of the contesting defendants and against the plaintiff. Accordingly, it is held that the plaintiff has failed to prove that the contesting defendants infringed upon copyright belonging to the estate of O. P. Ralhan and that, defendant No.2 has proved that it has perpetual rights to exploit the music and the songs belonging to the estate of O. P. Ralhan and also holds perpetual right to grant licence to others in respect of the said music and songs.

62. As regards issue No.3, considering that the copy of the licence agreement dated 22.11.2011 is placed on record and proved by defendant

No.1, this Court finds that the said defendant has been able to prove that it indeed had licence in respect of the song forming part of the film 'Talash'. The licence was issued by defendant No.2 in favour of defendant No.1. As this Court has already reached findings in favour of defendant No.2 with regard to perpetual rights of exploiting songs contained in the said films, in respect of further grant of licence, the aforesaid issue No.3 has to be answered in favour of the defendant No.1.

63. As regards issue No.6, this Court finds that the plaintiff has claimed that she had no personal knowledge of the subject agreements because she was born in 1964 and she was herself a child when the subject agreements were executed. She claims that the existence of some of the subject agreements came to her knowledge only when letter dated 09.01.2006 was received from defendant No.2. It is also to be noted that while the plaintiff claimed that the defendant No.2 had infringed upon the copyright belonging to the estate of the said O. P. Ralhan, she does not appear to have made any efforts to produce the subject agreements or to make any efforts for production of the same. It is also found that all the subject agreements do not appear to be on record and three of such agreements are on record. This Court has perused the clauses contained therein to find that wide-ranging rights were indeed assigned under the said agreements. In this situation, this Court finds that the plaintiff failed to make efforts to place on record the subject agreements and the allegations made against the defendants appear to be based on rights in the copyright belonging to the estate of O. P. Ralhan. In any case, the agreement dated 24.04.1967 came on record and this Court was assisted in appreciating the rival submissions in that context. It is also to be noted that the plaintiff herself was born in 1964 and she conceded in cross-examination that she had no personal knowledge about the subject agreements. Yet, while claiming reliefs against the defendants, the agreements and their interpretation were certainly relevant and

appropriate efforts could have been made by the plaintiff to produce the said documents.

64. But, considering the overall effect of the oral and documentary material on record, it would not be possible for this Court to reach a conclusion that the plaintiff can be said to be guilty of deliberately suppressing documents. The documents having come on record, detailed submissions have been already made on behalf of the rival parties, which this Court has considered to reach appropriate conclusions. Therefore, issue No.6 can be answered by holding that the plaintiff cannot be said to be guilty of suppression.

65. As regards issue No.7, this Court finds that although on the one hand, the plaintiff has alleged that royalty payments were not made and on the other hand, the defendant No.2 claims that such payments were made, the material on record shows certain crucial admissions made by the plaintiff. A document on record i.e. letter dated 21.07.2009 shows that the plaintiff herself acknowledged the receipt of a specific amount towards part payment of royalty. Even in cross-examination, the plaintiff admitted that certain amounts were received towards royalty payments. This is in stark contrast to the allegations made on behalf of the plaintiff about royalty payments not being made. There is also material placed on record on behalf of the defendant No.2 to show that amounts were forwarded to the plaintiff from time to time towards royalty payments, including payments for non-physical exploitation of the works. It is also stated that when efforts were made to make royalty payments, the plaintiff refused to accept. In the face of such material, issue No.7 is answered in favour of defendant No.2 and against the plaintiff.

66. Issue No.8 relates to entitlement of the plaintiff towards damages. The said claim is based on the assertion of the plaintiff that the contesting defendants have infringed upon the copyright. Since this

Court has already rendered findings against the plaintiff on the question of infringement while discussing issue Nos.2, 4 and 5, there is no question of payment of damages to the plaintiff. In that context, the specific contention raised on behalf of the defendant No.1 that cogent evidence regarding damages is not placed on record, is not required to be discussed. Hence, issue No.8 is answered against the plaintiff.

67. As regards issue No.9, in the interim judgement and order dated 08.05.2012 passed by this Court, a direction was issued to the contesting defendants to maintain and render accounts by filing them two times in a year in this Court. Hence, the said exercise of rendering of accounts has been undertaken as per the direction contained in the said order. This Court is of the opinion that even defendant No.2 has conceded that as per the subject agreements, the plaintiff would be entitled to royalties. It would be open for the plaintiff and the defendant No.2 to work out the aspect of payment of royalties on the basis of the subject agreements, taking into account the findings rendered hereinabove to the effect that the defendant No.2 is indeed entitled to exploit the works in terms of the subject agreements by any and every means whatsoever. No further discussion is necessary on the said issue.

68. As regards issue No.10, in the light of the findings rendered hereinabove, it is found that the plaintiff has failed to make out a case for granting reliefs as claimed in the present suit. Accordingly, the suit is dismissed. In the peculiar facts and circumstances of the present case, the parties shall bear their own costs.

(MANISH PITALE, J.)

MINAL SANDIP PARAB Digitally signed by MINAL SANDIP PARAB Date: 2025.06.11 14:33:05 +0530

Minal Parab