2026:CHC-OS:170-DB

IN THE HIGH COURT AT CALCUTTA

COMMERCIAL APPELLATE DIVISION

ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

A.O (COM) No. 17 of 2024

CS-COM 140 OF 2024

IA NO. GA-COM 1 OF 2024, GA-COM 2 OF 2024,

GA-COM 3 OF 2024

VODAFONE IDEA LIMITED

Vs.

THE INDIAN PERFORMING RIGHT SOCIETY LIMITED

AND

APOT 300 OF 2024

CS-COM 93 OF 2024 (OLD NO. CS 23 OF 2018)

IA NO. GA-COM 1 OF 2024

VODAFONE IDEA LIMITED

Vs.

SAREGAMA INDIA LIMITED & ANR.

For the Appellant : Mr. S. N. Mookherjee, Sr. Adv.
Mr. Arunabha Deb, Adv.
Mr. Soumabho Ghose, Adv.
Mr. Gourav Malhotra, Adv.
Ms. Ashika Daga, Adv.
Mr. Raunak Das Sharma, Adv.
Ms. Sanchali Bhowmik, Adv.
Mr. Yash Singhi, Adv.
Mr. Ayush Mitruka, Adv.
Mr. Karan Kaul, Adv.

For the Indian Performing Right Society Ltd. :Mr. Soumya Ray Chowdhury, Adv.
Mr. Ameet Datta, Adv
Ms. Susrea Mitra, Adv.

Ms. Samina Khanum, Adv.
Ms. Ojasvi Gupta, Adv.
Mr. Kaustav Misra, Adv.
Mr. Mukul Kochhar, Adv.
Mr. Naimish Tewari, Adv.
Mr. Ritesh Ganguly, Adv.
Mr. Surajit Biswas, Adv.
Mr. Awani Kumar Roy, Adv.

For the Saregama India Limited :Mr. Debnath Ghosh, Sr. Adv.
Mr. Avijit Dey, Adv.

Hearing Concluded on : April 20, 2026
Judgement on : May 8, 2026

DEBANGSU BASAK, J.:-

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Contentions of the Appeals

1. Two appeals have been heard analogously as they emanate out of the same impugned judgment and order dated May 17, 2024 passed in IA GA 1 of 2018, IA GA 3 of 2019, CS 23 of 2018, IA GA 1 of 2018, IA GA 2 of 2018, IA GA 3 of 2018, IA GA 5 of 2022, CS 155 of 2018 and IA GA 1 of 2018, IA GA 2 of 2019, IA GA 4 of 2021, CS 210 of 2018.

2. By the impugned judgment and order, learned Single Judge has held that, the respondent No. 1 in AO (COM) 17 of 2024, has rights independent of the respondent in APOT No. 300 of 2024. Learned Single Judge has issued various directions, in order to safeguard and protect the rights of the Indian Performing Right Society Limited (IPRS).

3. AO (COM) No. 17 of 2024 and APOT No. 300 of 2024 are at the behest of a telecommunication service provider. For the sake of convenience, the appellant in the two appeals is referred to as Vodafone. The respondent in AO (COM) 17 of 2024 is referred to as IPRS for the sake of convenience while the respondent No. 1 in APOT No. 300 of 2024 is referred to as Saregama for the sake of convenience.

4. The appellant Vodafone had filed an interpleader suit being CS No. 23 of 2018 in which, Saregama and IPRS are party defendants.

5. Saregama had filed CS No. 155 of 2018 seeking injunction against Vodafone from exploiting the copyright in the sound recording or copyright works in relation to Value Added Services (VAS) provided by Vodafone.

6. IPRS had filed CS 210 of 2018 seeking injunction on Vodafone from authorizing the public performance or communicating to the public IPRS's repertoire of musical and literary works or any part of the same or doing any act infringing the copyright of IPRS in any of the non-Saregama works.

7. In the three suits from time to time, the parties had filed several applications. In CS No. 23 of 2018, Vodafone had filed IA GA No. 1 of 2018 seeking interim relief. Court had passed an ad interim ex parte order dated October 1, 2018 therein restraining IPRS and Saregama from raising any claim on Vodafone on account of royalty for the usage of VAS and for depositing a sum of Rs. 3.5 crore with the Registrar Original Side, High Court at Calcutta. In such suit IPRS had applied by way of IA GA 3 of 2019 seeking vacating of the ex

parte ad interim order dated October 1 of 2018. In such suit, Court had passed an order dated July 7, 2022 and December 15, 2022 pursuant to which copies of the memorandum of settlement and the new agreement dated September 20, 2019 executed between Vodafone and Saregama were brought on record.

8. In the suit CS No. 155 of 2018, Saregama had filed IA GA 1 of 2018 seeking interim relief. Vodafone had filed IA GA 2 of 2018 seeking stay of the suit. Vodafone had filed IA GA 3 of 2018 seeking impleadment of IPRS in that suit. IPRS had filed IA GA 5 of 2022 seeking impleadment in the suit and seeking restraint orders on the withdrawal of the sum deposited in term of the same order dated October 1, 2018.

9. In CS No. 210 of 2018, IPRS had filed IA GA 1 of 2018 seeking an injunction restraining Vodafone from exploiting any of the musical and associated literary works recorded in the sound recording and cinematograph film without payment of royalty to IPRS. In such application Court had by the order dated October 12, 2018 allowed Vodafone to continue with its VAS subject to deposit of a sum of Rs. 2.5 crores with the Registrar Original Side. Vodafone had filed IA GA 2 of 2019 for impleadment of Sony and Tips in the suit. IPRS had filed an

application being IA GA 4 of 2021 seeking vacating of the order dated October 12, 2018 or in the alternative injunction restraining Vodafone from exploiting the right of IPRS without making a payment of Rs. 18 crores for the period until March 31, 2019 and also to disclose the data and logs of the content being exploited by the Vodafone.

Contentions of Vodafone

10. Learned Senior Advocate appearing for Vodafone has contended that, Vodafone entered into an arrangement with Saregama. By virtue of such arrangement with Saregama, Vodafone is not responsible and liable to pay any royalty to IPRS. According to him, Saregama and IPRS have to resolve their claims amongst each other.

11. Learned Senior Advocate appearing for the appellant has referred to the Copyright Act, 1957. He has contended that, prior to the amendment to the Act of 1957 introduced in 1995, the producer became the owner of the copyright in the musical and literary works. In support of such contentions, he has referred to Section 2(o), (q), (uu), (xx), (y), 13 (1), (3), (4), 14(a), (c), (d), (e), 16, 17, 18, 19, 33, 34 and 35 of the Act of 1957.

12. Learned Senior Advocate appearing for Vodafone has submitted that, the High Court in ***AIR 1974 Cal 257 (Eastern India Motion Pictures Association Versus Indian Performing Rights Society)*** held that, IPRS did not have any right over the musical and literary works. He has contended that, the decision of the Calcutta High Court was affirmed by the Supreme Court in ***1977 (2) SCC 820 (Indian Performing Rights Society Versus Eastern India Motion Pictures Association).*** He has contended that, subsequently such decision was followed in ***AIR 1978 Cal 477 (Eastern India Motion Pictures Association Versus Indian Performing Rights Society).***

13. Learned Senior Advocate appearing for the Vodafone has contended that, both before and after the Copyright (Amendment) Act, 2012, sound recording continues to be recognized as a separate copyright. In support of such contention, he has relied upon ***2011 SCC OnLine Del 3113 (The Indian Performing Rights Society Versus Aditya Pande).*** He has contended that, the Single Bench decision was affirmed by the Division Bench in ***2012 SCC OnLine Del 2645 (The Indian Performing Rights Society Versus Aditya Pande).*** Supreme Court has also noted and affirmed

the view of the Delhi High Court in ***2008 Volume 13 Supreme Court Cases 30 (Entertainment Network India Limited Versus Super Cassette Industries Limited).***

14. Learned Senior Advocate appearing for Vodafone has contended that, after the Copyright (Amendment) Act, 2012 and upon incorporation of musical and literary works into sound recording, the producer, as the owner of such sound recording, continues to be regarded as the owner of the work in its composite form, as also the musical and literary works embodied therein, subject to the statutory obligations to share royalties with the authors thereof in respect of the musical and literary works embodied in the sound recording. He has contended that, where license is granted to exploit the sound recording no separate licence is required in respect of musical and literary works embodied therein. In support of such contention, he has referred to and relied upon Sections 2(ff), (ffd), (o), (p), (q), (uu), (xx), (y), 13, 14(a) (iv), (e), 17 (proviso), 18 (1st and 3rd proviso), 19(3), (8), (9), (10), 30, 33, (new 2nd proviso), 33(3A), (4), (5) and 35 of the Act of 1957.

15. In support of the contention with regard to the change of law consequent upon the amendments incorporated learned Senior Advocate appearing for Vodafone has drawn the

attention of the Court to a chart and comparison of amendments. He has also relied upon ***2017 Volume 11 Supreme Court Cases 437 (International Confederation of Societies of Authors and Composers (ICSAC) vs. Aditya Pandey and Others)***, ***2021 SCC OnLine Del (1)*** **(*The Indian Performing Rights Society vs. Entertainment Network (India) Limited & Ors.*)** and order dated December 20, 2021 passed in ***Entertainment Network (India) Limited & Ors. vs. The Indian Performing Right Society*** by the Division Bench of the Delhi High Court.

16. Learned Senior Advocate appearing for Vodafone has contended that, the consequence of the Copyright (Amendment) Act, 2012 is that, the owner of the copyright in a sound recording granting a licence to communicate such sound recording to the public, no separate licence is required from the owner of the musical and literary works embodied therein. In such circumstances, he has contended that, where the producer licences or assigns the musical and literary works independently of the sound recording then the authors of such works become entitled to share in royalty. Further, where the musical and literary works embodied in a sound recording are utilized independently thereof such as for the

purpose of creating a different sound recording, such utilization constitutes use of the musical and literary works independent of the original sound recording and thus will require royalties to be shared with the authors of the musical and literary works.

17. Learned Senior Advocate appearing for Vodafone has contended that, the assignments made by Saregama does not pertain to utilizing of sound recording. It pertains only to the utilization of musical and literary works and in substance does not constitute an assignment of a copyright therein, but merely confers an exclusive right to collect royalties. He has contended that, inasmuch as the arrangement contemplates sharing of royalties with the authors, IPRS operates only as a collecting agent in respect of such works. In support of such contention he has relied upon the deed of assessment dated May 22, 2017, and the amendment agreement dated May 22, 2017. He has contended that the Articles of Association would reflect that Section 19 read with Section 30 of the Act of 1957 have no application to the present proceedings as assignment is limited to exclusive authorization.

18. Learned Senior Advocate appearing for Vodafone has contended that, Vodafone settled CS No. 155 of 2018 which

was instituted by Saregama. He has contended that, the terms of settlement filed therein indicate that no amounts are presently payable. Referring to the Settlement Agreement dated September 20, 2019, Extension letter dated December 2, 2020, agreement dated September 20, 2019 and Extension and Renewal agreement (CRPT) dated May 5, 2021, he has contended that they were disclosed in the interest of full and fair disclosure.

19. Learned Senior Advocate appearing for Vodafone has contended that, Vodafone was complying with the interim directions passed by the Division Bench. He has suggested few modalities through which, the subsisting interim order passed in the appeal may be continued till the disposal of the appeal.

Contentions of IPRS

20. Learned advocate appearing for IPRS has referred to the sequence of events and the list of proceedings. He has contended that, the core issue is, whether Vodafone possesses licence to commercially exploit the underlying contents of sound recording, namely musical and literary works incorporated in the sound tracks/sound recording or not.

21. Learned advocate appearing for IPRS has contended that, Vodafone has neither produced any evidence nor claimed to have obtained licence from Saregama or any other music company in terms of Section 30 read with Section 19 and 30A of the Act of 1957 to commercially exploit musical and literary works incorporated in the sound recordings.

22. Learned advocate appearing for IPRS has contended that CS No. 23 of 2018 is an interpleader suit. Therefore, Vodafone as the plaintiff in such suit cannot contend that, IPRS has no right in the underlying musical and literary works incorporated in the sound recordings. He has contended that, the Master Agreement dated March 14, 2014 between Vodafone and Saregama is of an unspecified duration. He has referred to Section 19 (5) of the Act of 1957 and contended that, even if copyright licence was granted by Saregama, the same expired on March 30, 2019 in view of the provisions of Section 19(5) of the Act of 1957 and consequently, the same has ceased to be in force.

23. Referring to the Master Agreement dated March 14, 2014, learned advocate appearing for IPRS has contended that, the same refers to further agreements to be entered into between the parties therein, in the future. One of such

agreement is dated June 16, 2016 by which, parties have acknowledged that, Vodafone may be required to procure licence from IPRS and that, procurement of such licence will be the responsibility of Vodafone at its sole cost. According to him, therefore, reading the Master Agreement dated March 14, 2014 and Clause 13 of the subsequent agreement dated June 16, 2016, have established that, Saregama did not grant any licence to Vodafone to exploit the underlying musical and literary works incorporated in the sound recordings of Saregama.

24. Learned advocate appearing for IPRS has referred to the order dated October 1, 2018 passed in CS No. 23 of 2018 where, the submission on behalf of Saregama was recorded to the effect that, Vodafone's obligation to IPRS was independent to the obligations of Vodafone to Saregama.

25. Learned advocate appearing for IPRS has contended that, Saregama did not have any right to grant licence in 2016 or in 2019 in respect of the underlying musical and literary works incorporated in the sound recordings to Vodafone as Saregama had already assigned the same to IPRS in 1993 and in 2017.

26. Learned advocate appearing for IPRS has contended that, two agreements between Vodafone and Saregama were produced in Court pursuant to orders passed by the Court. Such agreements are, a Memorandum of Settlement dated September 20, 2019 and a new agreement dated September 20, 2019. He has contended that, neither the Memorandum of Settlement dated September 20, 2019 nor the new agreement of the same date are of any avail because all of them expired on March 31, 2021. Moreover, Vodafone has not amended its plaint to incorporate the subsequent events. In any event the two subsequent agreements are contrary to the contention of the Vodafone that, no further licence is required from IPRS.

27. Learned advocate appearing for IPRS has contended that, Saregama restricted right to sound recordings only. Saregama has not granted right to commercially exploit the underlying musical and literary works incorporated therein after acknowledging that IPRS is the owner of the copyright in respect thereof.

28. Learned advocate appearing for IPRS has referred to various clauses of the Memorandum of Settlement dated September 20, 2019 as well as the new agreement of the same date and contended that, the same does not and cannot be

construed to mean that, right in respect of underlying musical and literary works incorporated in the sound recording have been granted by Saregama to Vodafone. He has contended that, Saregama could not have granted such right, since, it did not possess the same and in any event assignment thereof would be violation of Section 19(8) of the Act of 1957.

29. Learned advocate appearing for IPRS has referred to the stand taken by Saregama in the proceedings and contended that, Saregama never contended that it assigned the underlying musical and literary works in the sound recordings of Vodafone.

30. Learned advocate appearing for the IPRS has contended that, Saregama and other music companies do not have any legal authority or competence to grant licence in respect of underlying musical and literary works incorporated in the sound recordings to Vodafone for commercially exploiting the same. In support of such contention, he has drawn the attention of the Court to the various provisions of the Act of 1957 as also the dates on which agreements were executed by and between Vodafone and Saregama. He has contended that, licence if any granted, is void in view of the provisions of Sections 18, 19, 33 and 34 of the Act of 1957. He

has submitted that, Vodafone did not obtain and could not have obtained any licence or authorization from music companies including Saregama for commercial exploitation of the underlying musical and literary works incorporated in the sound recordings or any right to collect royalties in respect of such underlying works.

31. Learned advocate appearing for IPRS has contended that, the authorities cited on behalf of the Vodafone are pre amendment authorities and have no relevance to the facts and circumstances of the present case.

32. Learned advocate appearing for IPRS has relied upon ***1997 (2) MHLJ 55 (Mangal Bhikaji Nagpase vs. State of Maharashtra and Another)*** in support of the contention, in an interpleader suit, in the event the plaintiff claims any interest in the suit property, such suit has to necessarily fail. He has relied upon ***2023 SCC OnLine Bom 944 (Indian Performing Right Society Limited vs. Rajasthan Patrika Pvt. Ltd.)*** to contend that Vodafone has to obtain licence from IPRS.

Contentions of Saregama

33. Learned Senior Advocate appearing for Saregama has submitted that, the claims of his client vis-à-vis Vodafone stands settled. He submits that, his client is not liable to pay any amount to IPRS.

Nature of the Suits and Parties

34. The parties have settled one suit being CS No. 155 of 2018 out of the three suits.

35. In the two remaining suits essentially there are three parties namely Vodafone, Saregama and IPRS. Vodafone is a tele-communication service provider. IPRS is a copyright society within the meaning of the Act of 1957. Saregama is a company engaged in the manufacture, sales and publication of sound recording including digital downloads of cinematograph films songs as also non-cinematograph films songs.

36. The two remaining suits revolve around competing rights recognized under the Act of 1957. The three parties in the two remaining suits claim competing rights.

37. Vodafone as a telecommunication service provider introduced a value added service (VAS) for its customers.

Such value added service (VAS) permitted customers to use caller tunes and ring tones of songs both film and non-film.

38. Vodafone claims that Saregama possesses the copyright of the sound recordings. Vodafone entered into an arrangement with Saregama for use of the copyright of sound recording.

39. According to Vodafone no further royalties are payable to IPRS upon Vodafone entering into an arrangement with Saregama. Saregama does not claim any amount from Vodafone subsequent to the arrangement entered into between them. While Saregama does not claim any amount from Vodafone, it is also categorical that, it is not liable to pay any royalties to IPRS that IPRS may be found entitled to under the provisions of the Act of 1957 from Vodafone.

Issues

40. The following issues have fallen for consideration in these appeals:-

(i) Do the amendments introduced by the Copyright (Amendment) Act, 2012 allow IPRS to claim royalties in respect of the underlying musical and literary works in

a sound recording when such sound recording is commercially exploited?

(ii) Do any music company including Saregama have any legal authority or competency to grant licence in respect of the underlying musical and literary works incorporated in sound recordings to Vodafone for commercial exploitation ?

(iii) Does Vodafone have licence to commercially exploit the underlying contents of musical and literary works incorporated in the sound recordings?

Analysis

Act of 1957 and the subject amendments

41. In order to arrive at the conclusions of the three issues noted above, one has to assess the provisions of the Act of 1957 and the rights recognized thereunder.

42. Parties have referred to the legislative evolution of the copyright law in India. It would appear from the statement of objects and reasons of the Act of 1957, that, the existing law relating to copyright as contained in the Copyright Act, 1911 and as modified by the Indian Copyright Act, 1914 had been in existence prior to the Act of 1957 coming into force.

43. The Act of 1957 has come into force on January 21, 1958. It had been enacted so as to amend and consolidate the law relating to copyright. The Act of 1957 has been amended 8 times namely in, 1983, 1984, 1992, 1999, 2012, 2017 and 2021. The last two amendments have been introduced through the Finance Act, 2017 and the Tribunals Reforms Act, 2021.

44. Largely the amendments that have been introduced to the Act of 1957 with effect from June 21, 2012 by the Copyright (Amendment) Act, 2012 are the bone of contentions between the parties.

45. Parties have referred to the statement of objects and reasons to the Amendment Act of 2012. Learned Single Judge has referred to the statement of objects and reasons to the Amendment Act of 2012 in paragraph 16 of the impugned judgment and order.

46. The Amendment Act of 2012 has taken into consideration, World Intellectual Property Organization (WIPO), Internet Treaties, namely, WIPO Copyright Treaty (WCT), 1996 and WIPO Performances and Phonograms Treaty (WPPT), 1996. It has noted that, such treaties have set the international standards in these spheres. It has also noted

that, such treaties have addressed challenges posed to the protection of Copyrights and related rights by digital technology, particularly with regard to the dissemination of protected material over digital works such as the Internet.

47. Statements of objects and reasons to the Amendment Act 27 of 2017 has noted that the amendments sought to be introduced to the Act of 1957 were framed in order to extend protection of copyright material in India over digital works and to amend the Act of 1957 to harmonize with the provisions of two WIPO Internet Treaties, to the extent considered necessary and desirable. It has noted that, WCT deals with issue for the author of literary and artistic work such right, writings, computer programmes, original data bases, musical works, audio and visual works, works of fine art and photographs. It has also noted that WPPT protects the rights of the performers and producers of phonograms. Although, India has not signed the two treaties, in order to encourage creativity for promotion of culture, enterprises and innovation so that creative people realize their potential and to keep pace with the challenges for a fast growing knowledge and modern society, the amendments have been proposed.

48. The provisions of the amendments that were introduced to the Act of 1957 have to be considered and understood on the anvil of the statements of objects and reasons to the Amendment Act 27 of 2012.

Definitions under the Act of 1957

49. Parties have highlighted various provisions of the Act of 1957. Parties have referred to the definitions appearing in the Act of 1957. Section 2(ff) has defined communication to the public to mean making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by using physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available. It has explained that, communication through satellite or cable or any other means of simultaneous communication to one or more household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.

50. Section 2(ffd) of the Act of 1957 has defined a copyright society to mean a society registered under Sub-Section (3) of Section 33. Section 2(o) of the Act of 1957 has defined literary work to include computer program, table and compilations including computer data base. Musical work has been defined in Section 2(p) to mean a work consisting of music and includes any graphical notations of such works but not to include any words or any action intended to be sung, spoken or performed with the music.

51. Section 2(uu) of the Act of 1957 has defined producer to mean a person who takes initiative and responsibility for making the work in relation to a cinematograph film or sound recording. Section 2(xx) has defined sound recording to mean a recording of sound from which such sound may be produced regardless of the medium on which such recording is the medium by which the sounds are produced. Section 2(y) has defined work to mean any of the works namely the literary, dramatic musical or artistic works, cinematograph film, or a sound recording.

52. Section 2(ff) has been amended lastly by the Amendment Act of 2012. Section 2(o) has been amended by the Amendment Act of 1994 and subsequently, by the

Amendment Act of 1999. Section 2(e) has been amended by the Amendment Act of 1999. Section 2(p) has been amended by the Amendment Act of 1994 while Section 2(uu) has been inserted by the Amendment Act of 1994.

Sections 13, 14, 15, 17, 18 and 19 of the Act of 1957

53. The Act of 1957 has been divided into 15 chapters. Chapter III has dealt with copyright. Section 13 has delineated the works in which copyright subsists. Section 13(1)(a) has recognized copyright to subsist in original, literary, dramatic, musical and artistic works. Section 13(1)(c) has recognized subsistence of copyright in sound recording. In the two subsisting suits, the dispute revolve around the right, if any, of IPRS to collect royalties for the original literary and musical works in sound recording.

54. Section 13 of the Act of 1957 has delineated various copyrights that subsist in respect of different classes of work. Literary and musical works are independent copyright which have been recognized under Section 13(1)(a) of the Act of 1957 to subsist as that of sound recording recognized in Section 13(1)(c) thereof.

55. Sub-sections (2) and (3) of Section 13 of the Act of 1957 have stipulated that copyright in respect of literary, musical and sound recordings, amongst others, shall not subsist in the eventualities specified there occurring. Such eventualities have not arisen in the facts and circumstances of the present case.

56. Section 14 of the Act of 1957 has specified the meaning of copyright. It has explained the meaning of all the categories of copyright noted in Section 13(1) of the Act of 1957 including literary, musical and sound recording copyrights.

57. Section 15 of the Act of 1957 has made special provisions for copyright in design registered or capable of being registered under the Design Act, 2000. Section 16 of the Act of 1957 has stipulated that, no copyright shall exist except as provided under the Act of 1957.

58. Chapter IV of the Act of 1957 has dealt with the ownership of copyright and the rights of the owner. Section 17 of the Act of 1957 falling under Chapter IV has identified the first owner of copyright. Essentially, it has stipulated that, the first owner of the copyright shall be the author when it is a case of literary, dramatic or artistic works if not employed to

do so by any other person. In the eventuality the author is employed by any employer to create the work then the employer becomes the first owner.

59. Section 18 of the Act of 1957 has dealt with the assignment of copyright. It has recognized that the owner of the copyright or the prospective owner in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations either for the whole of the copyright or any part thereof. Section 18 of the Act of 1957 has four provisos. The 2nd, 3rd and 4th provisos to Section 18 have been introduced by the Amendment Act of 2012 with effect from June 21, 2012.

60. The 3rd and 4th proviso to Section 18 (1) of the Act of 1957 has assumed significance in the facts and circumstances of the present case since, they have dealt with the literary or musical work and the sound recording. The 3rd and 4th proviso have made every assignment of copyright made contrary to the stipulations therein void.

61. The 3rd proviso has stipulated that, the author of literary or musical works included in a cinematograph film shall not assign or waive the right to receive royalties to share on equal basis with the assignee of copyright for the utilization

of such work in any form other than the communication to the public of the work along with the cinematographic film in cinema hall. Any assignment to the contrary shall be void. The 4th proviso has stipulated that the author of the literary or musical works included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on equal basis with the assignee or copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution of any assignment to the contrary shall be void.

62. The effect of the 3rd and the 4th proviso under Section 18 (1) of the Act of 1957 is that with effect from June 21, 2012 that is the date when the such provisos have come into effect, all assignments excepting such portions which are saved, are void.

63. It is nobody's case before us that, the authors in the literary or musical works included in the sound recording forming part of a cinematographic film as also those not forming part of a film, have assigned their rights to Vodafone. In our view, these two provisos have recognized that, copyright in literary or musical works included in a cinematograph film

or in a sound recording but not forming part of any cinematograph film, exist and that, such copyrights have to be assigned validly in accordance with the Act of 1957. In absence of valid assignment in accordance with the Act of 1957, the persons using such works would be guilty of violation of the provisions of the Act of 1957.

64. Sub-section (2) of Section 18 of the Act of 1957 has recognized that, an assignee of a copyright shall be treated as the owner of the copyright and that the provisions of the Act of 1957 shall have affect accordingly. Sub-section (3) of Section 18 of the Act of 1957 has explained that the expression 'Assignee' as respect the assignment of the copyright in any future works includes the legal representative of the assignee, if the assignee expires before the work comes into existence.

65. Section 19 of the Act of 1957 has laid down the mode of assignment. Sub-section (1) thereof has specified that, no assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized agent. Sub-section (2) has stipulated that, the assignment of copyright in any work shall identify such work, and shall specify the right assigned and the duration and territorial

extent to all such assignment. Sub-section (3) has dealt with the amount of royalty and other consideration payable.

66. Section 19 (4), (5) and (6) of the Act of 1957 have dealt with the time period and the territorial extent within which the assignment of copyright may be exercised. Sub-section (7) of Section 19 has stated that, nothing in Sub-sections (2), (3), (4), (5) and (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.

67. Sub-sections (8), (9) and (10) of Section 19 of the Act of 1957 have been inserted by the Amendment Act, 2012 with effect from June 21, 2012. Sub-section (8) has stipulated that, assignment of copyright in any work contrary to the terms and conditions of the right already assigned to a copyright society in which the author of the work is a member shall be void. Sub-section (9) has stipulated that no assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the works to claim an equal share of the royalties and consideration payable in case of utilization of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall. Sub-section (10) of Section 19 has stipulated that no assignment of copyright in any work to make a

cinematograph film shall affect the right of the author of the work to claim an equal share of the royalties and consideration payable for any utilization of such work in any form.

68. In the context of copyright existing in the underlying literary and musical work in a sound recording forming part of a cinematograph film or a non-cinematograph film songs Section 13(4) of the Act of 1957 has stipulated that, copyright in the cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or substantial part of which, a film, or, as the case may be, a sound recording is made. Read with Section 19(10) of the Act of 1957, Section 13(4), in our understanding, has, in fact, recognized that, copyright in the underlying literary and musical works in a sound recording both in case of cinematograph film or a sound recording shall exists. Since, Section 13 of the Act of 1957 has recognized the existence of such right, while Section 19(9) and (10) have ensured that, no assignment of copyright in any work to make a cinematograph film or to make a sound recording shall affect the right of the author to claim an equal share of royalties and consideration payable in case of utilization of the work.

69. In our understanding, therefore, the Act of 1957 has recognized the right of the author of literary and musical work in a sound recording to receive royalties and consideration in the event, sound recording is used for commercial exploitation other than when, such sound recording is forming part of cinematograph film which is exhibited in a cinema hall. Therefore, author of underlying literary and musical work in a sound recording is entitled to royalties and other consideration when such sound recording is commercially exploited. Same and except when, a sound recording forms part of cinematograph film and such cinematograph film is exhibited in a cinema hall.

Authorities on Copyright of Literary and musical works

70. One of the authorities that the parties have cited, ***Eastern India Motion Pictures Association (supra)*** is a decision of the Division Bench of this Court. The issue that had fallen for consideration in such proceeding was whether the composers of lyrics and music, have copyright in the musical work incorporated in the soundtrack of a cinematograph film or not. IPRS had succeeded on such issue before the Copyright Board. Such issue has been answered by

holding that, when a composer of lyric or music composes for the first time for valuable consideration for purposes of cinematograph film, the owner of the film at whose instance the composition is made, becomes the first owner of the copyright in the composition. The composer acquires no copyright at all either in respect of the claim or sound track which he is capable of assigning.

71. The appeal from the Calcutta High Court's decision noted above has resulted in the celebrated ***Indian Performing Right Society Ltd (supra)*** of the Supreme Court. Affirming the decision of the Calcutta High Court, it has held that, when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration to make the cinematograph film, or to compose the music or lyric thereof, that is, the sounds for incorporation or absorption in the soundtrack associated with the film, the producer becomes the first owner of the copyright therein and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music, on the one hand, and the producer of the cinematograph film, on the other.

72. ***Indian Performing Right Society Ltd (supra)*** has highlighted the "un-Indian feature in the Indian Copyright Act" in paragraphs 19 onwards. These observations have formed part of the amendments introduced to the Act of 1957.

73. Levy of tariffs by the Performing Right Society Ltd had fallen for consideration before the Division Bench in ***Indian Performing Right Society Ltd and others (supra)***. The Copyright Board did not interfere with the tariff introduced by the Performing Right Society Ltd of London. The Division Bench had set aside such order of the Copyright Board on the strength of the ratio laid down in ***Indian Performing Right Society Ltd (supra)*** of the Supreme Court.

74. Supreme Court in ***International Confederation of Societies of Authors and Composers (supra)*** has considered the Single Bench decision of the Delhi High Court in ***Aditya Pandey and Others (supra)*** as also the Division Bench of the Delhi High Court arising therefrom, in ***Mr. Aditya Pandey and Another (supra).*** Supreme Court has held that, there is a distinction between assignment of copyright of a work and licence to use the work. It has held that, in assignment, normally, ownership of the copyright is transferred but in the case of licence another person is allowed to use the work of

the author. It has also clarified that, with effect from June 21, 2012 in view of Sub-Section (10) of Section 19, the assignment of the copyright in the work to make sound recording which does not form part of any cinematograph film, shall not affect the right of the author of the work to claim an equal share of royalties and or consideration payable for utilization of such works in any form.

75. In ***Entertainment Network (India) Limited (supra)*** Supreme Court has interpreted Section 31 of the Act of 1957 in the light of the disputes and differences in regard to broadcasting of songs in the free to air private FM radio. It has noted that, in a given case, where, the owner of the copyright has refused to republish or allow republication or allow performance or refuse to allow communication of the copyright both to direct grant of licence to republish the work, perform the work in public or communicate the work as the case may be.

76. A Single Judge of the Delhi High Court in the ***Entertainment Network (India) Limited and others (supra)*** has held that, the 2012 Amendment does not alter the provisions of the Act of 1957. It has held that, Section 19(10) of the Act of 1957, does not mean that utilization of the

underlying literary and musical works as embodied in the sound recording entitles the ownership of the copyright in the underlying works to demand equal share of royalties and consideration payable in the sound recordings. It has read Section 19(10) of the Act of 1957 as not affecting the right of the author of the underlying work in sound recording to claim share in royalties payable for utilization of such works although identically as in the sound recording but not in any other form. Significantly, such observations have been made in suit filed prior to the amendments of 2012 having been introduced to the Act of 1957.

77. The Division Bench of the Delhi High Court in a batch of appeals being ***Entertainment Network (India) Limited and Others (supra)*** has noted various issues falling for consideration in such appeal. One of such issues which the Division Bench has noted is whether the 2012 Amendment of the Act of 1957 alters the position of law as it exists prior to the 2012 amendment where separate authorization for licence was not necessary from the author of musical and literary works embodied in the sound recording when such sound recording was broadcast through radio and whether the 2012 amendment is only clarificatory in nature.

Rights of IPRS

78. Section 13 of the Chapter III of the Act of 1957 has recognized that, copyright in original literary and musical works shall subsist throughout India, subject to the provisions of Section 13 and other works of the Act of 1957. We have limited ourselves to literary and musical works and sound recordings inasmuch as, these three rights are subject matter of the disputes between the parties.

79. Parties have acknowledged that, copyright in literary and musical works as also sound recordings exists. Parties have not claimed that such copyrights in those three categories stand affected by reason of any of the events specified in Section 13 of the Act of 1957. Section 17 of the Act of 1957 has identified the first owner of the copyright mentioned in the categories under Section 13. The first ownership of such copyright is again subject to the provisions of the Act of 1957.

80. As has been noted above, three provisos have been added to Section 18(1) of the Act of 1957 by the Amendment Act of 2012. The three provisos that have been introduced are the 2nd, 3rd and 4th. The 3rd and 4th provisos have made any agreements contrary to those two provisos void. Essentially,

the 3rd and the 4th provisos have permitted the author of literary and musical work included in a cinematograph film and the author of literary and musical works included in the sound recording but not forming part of any cinematograph film to assign their copyright to the heirs of such authors or to the copyright society or the collecting society as the case may be. Apart from such assignments or grant of licence, all agreements have been declared to be void.

81. Section 19(10) of the Act of 1957 has specified that, no assignment of the copyright in work to make a sound recording which does not form part of the cinematograph film shall affect the right of the author of the work to claim an equal share of royalty and consideration payable for any utilization of such works in any form.

82. Section 2(d) of the Act of 1957 has defined author to mean in relation to literary work, the author of the work; in relation to a musical work, the composer; and in relation to a cinematograph film or sound recording, the producer. Section 2(y) of the Act of the 1957 has defined work to mean, in the context of the present case, a literary work or musical work or a sound recording.

83. Therefore, in our understanding, upon reading Section 18(1), 2nd and 3rd provisos, Section 19(10) and Sections 2(d) and (y) of the Act of 1957, grant of licence or any agreement entered into by the author of literary and musical works other than the assignment to their heirs or to a copyright society or a collecting society as the case may be, is void. The producer of a cinematograph film can play a cinematograph film at a cinema hall without being liable to pay any royalty to any of the authors of the literary or the musical works, if such producer has engaged them for the purpose of production of such cinematograph film. The entirety of the cinematograph film has to be played at a cinema hall for the producer of the cinematograph film not to be liable to pay to the authors of the literary and the musical works incorporated in such films. Any other method of use will attract the liability of payment of royalties to such authors. Any agreements contrary to the provisions of Section 18(1) and 19(10) are void by virtue thereof.

84. The Amendments to the Act of 1957 incorporated by the Copyright Amendment Act, 2012, have ushered in a paradigm shift in the rights of owners of literary and musical rights. They are now protected and entitled to receive royalties

for the use of their literary and musical works incorporated in the sound recordings. This paradigm shift in the copyright of the musical and literary works embodied in the sound recording when, such sound recording is commercially exploited, has been recognized in ***International Confederation of Societies of Authors and Composers (supra)***.

Answer to Issue (i)

85. In view of the discussions above, the first issue is answered in the affirmative. The amendments introduced by the Copyright Amendment Act, 2012 allow IPRS to claim royalties in respect of musical and literary works in a sound recording when such sound recording is commercially exploited.

Answer to Issue (ii) and (iii)

86. Chapter VII of the Act of 1957 has dealt with Copyright Society. Section 33 of the Act of 1957 has modulated the manner and method as also the rights of the Copyright Society. A substantial portion of Chapter VII has been substituted by the Copyright Amendment Act, 1994. With the

coming into existence of the Copyright Society, rights of the authors of musical and literary works have vested with a Copyright Society incorporated in terms of Section 33 of the Act of 1957. However, an individual author is at liberty to exit such a society, if such individual has chosen to do so.

87. The Act of 1957 has therefore, by various amendments, permitted the Copyright Society to claim royalties in respect of musical and literary works in a sound recording when such sound recording is commercially exploited.

88. In course of hearing of the appeal, our attention has been drawn to various deeds executed between Vodafone and Saregama and other parties. Two deeds of assignments executed between Tips Cassettes and Records Company and IPRS and a deed of assignment between Saregama and IPRS have been relied upon. There is also a deed of assignment executed between Sony Music Entertainment (India) Private Limited and IPRS dated June 30, 2000.

89. Parties have drawn our attention to the Master Agreement dated March 14, 2014 entered into between Vodafone and Saregama along with two annexed agreements dated March 14, 2014 and annexed agreement dated May 31,

2014, December 1, 2015 and June 16, 2016. The terms and conditions of these agreements, do not make it the right of IPRS to collect royalties in respect of musical and literary works in sound recording when such sound recording is commercially exploited by Vodafone. These agreements, do not survive Section 19(10) of the Act of 1957 to the extent, where, it is proposed to construe these agreements to mean a denial of such right of IPRS. On the parity of the same reasoning, the subsequent agreements also entered into by Vodafone with the sound recording companies, do not negate the right of IPRS to royalties in respect of musical and literary works in a sound recording when such sound recording is commercially exploited.

90. Parties have disclosed various agreements that, Vodafone and Saregama have entered into with regard to the sound recordings. None of these agreements have provided for payment of royalties that the IPRS is entitled to. On the contrary, some of the agreements between Vodafone and Saregama have noticed that, IPRS is entitled to royalties upon Vodafone commercially exploiting sound recordings. In any event, agreements between Vodafone and Saregama cannot affect the right of IPRS, if they otherwise exists.

91. In view of the discussions above, the second and third issues are answered in the negative. Saregama does not have any legal authority or competence to grant licence in respect of underlying musical and literary works incorporated in sound recording of Vodafone for commercial exploitation. Vodafone does not have licence to commercially exploit the underlying contents of sound recording incorporated in the sound recordings without express permission from IPRS.

92. In these appeals, Coordinate Benches had passed orders requiring deposit of money with Joint Special Officers dated May 22, 2024 and June 12, 2024.

93. In view of the discussions above, it would be appropriate that, all money lying in deposit with the Joint Special Officers and with the Registrar, Original Side, be made over to the IPRS on IPRS submitting an undertaking in writing in the pending suits that, IPRS will refund such amount to the rightful owner thereof, in the event, IPRS does not succeed in the suit.

94. We have found no ground to interfere with the impugned judgment and order.

95. A.O (COM) No. 17 of 2024 and APOT 300 of 2024 along with connected applications are disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

96. I agree.

[MD. SHABBAR RASHIDI, J.]

Later:-

Prayer for stay made on behalf of the Vodafone is considered and refused.

[DEBANGSU BASAK, J.]

I agree.

[MD. SHABBAR RASHIDI, J.]