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

Reserved on: 10 February 2026
Pronounced on: 21 May 2026

\+ FAO(OS) (COMM) 52/2025

MR ILAIYARAAJA .....Appellant
Through: Ms. Swathi Sukumar, Sr. Adv. with Mr. Naveen Nagarjuna, Mr. Ritik Raghuwanshi, Ms. Rishika Agarwal and Ms. Shrudula Murthy, Advs.

versus

SAREGAMA INDIA LIMITED .....Respondent
Through: Mr. J. Sai Deepak, Sr Adv. with Mr. Ankur Sangal, Mr. Ankit Arvind, Mr. Shashwat Rakshit, Mr. Rishabh Rao, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

% JUDGMENT
21.05.2026

C. HARI SHANKAR, J.

A. The *lis*

1. A song is just a song, a thing of joy to lighten a dreary evening. That is, till it becomes subject matter of copyright conflict in a court of law, when it suddenly metamorphoses into much more.

2. Copyright vests, in a song, independently in the music, the

lyrics, and the sound recording. It is the intricate balance between these copyrights, and their situs, with which we, in this appeal, are concerned.

3. Ilaiyaraaja, a highly respected music maker from the South, is in appeal before us, challenging judgment dated 30 January 2025 passed by a learned Single Judge of this Court in IA 1021/2025 and IA 2163/2025 in CS (Comm) 38/2025[1].

4. IA 1021/2025 was filed by the respondent Saregama India Limited[2], as the plaintiff in the suit. By order dated 16 January 2025, *ad interim* relief was granted to SIL and against the defendants in the suit, namely, Vels Film International Limited[3] as Defendant 1, Divo TV Private Limited[4] as Defendant 2 and the appellant Ilaiyaraaja as Defendant 3.

5. IA 2163/2025 was filed by Ilaiyaraaja for vacating the stay granted by order dated 16 January 2025.

6. The impugned judgment allows IA 1021/2025 and dismisses IA 2163/2025.

7. Ilaiyaraaja, as we have noted, is in appeal.

B. Facts

[1] "the Suit" hereinafter
[2] "SIL" hereinafter
[3] "VFIL" hereinafter
[4] "DTPL" hereinafter

B.I The Challenge

8. SIL pleaded, in the suit, that VFIL, DTPL and Ilaiyaraaja had infringed SIL's copyright in the literary and musical work in the song *En Iniya Pon Nilave*[5] from the film *Moodu Pani*, which was slated for release on 31 January 2025. The learned Single Judge has noted, in the opening paragraph of the impugned judgment, that it was undisputed that VFIL had used the lyrics and music composition of the disputed song and had caused a fresh recording thereof, which was proposed to be used in an upcoming cinematograph film *Aghathiyaa*. We may note that it is the case of Ilaiyaraaja, as well as of VFIL before the learned Single Judge, that VFIL had only adapted the song, as was permissible under Section 14(a)(vi)[6] of the Copyright Act, 1957.

B.II Rival stands before the learned Single Judge

9. Before the learned Single Judge, SIL asserted and averred as under:

(i) Raja Cine Arts[7], the producer of the film *Moodu Pani*, had entered into an agreement with SIL on 25 February 1980 through SIL's agent Saraswati Stores. Under this agreement, SIL

[5] "the Disputed Song" hereinafter

[6] **14. Meaning of copyright**. – For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

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(vi) to make any adaptation of the work;

[7] "RCA" hereinafter

became the owner of the sound recordings as well as the musical and literary works contained in the film *Moodu Pani*, which included the disputed song.

(ii) On 9 January 2025, SIL came across a teaser of an upcoming cinema film *Aghathiyaa*, being produced by VFIL and distributed by DTPL, on various social media platforms. These platforms announced the imminent release of the song recordings of *Aghathiyaa* on 10 January 2025, which included a recreation of the disputed song. Immediately thereupon, SIL addressed a notice to VFIL and DTPL on 10 January 2025, calling on them to cease and desist from using any recreation of the disputed song. VFIL responded on 11 January 2025, asserting that it had obtained the license to adapt, record/recreate and synchronize the disputed song from Ilaiyaraaja who, as the composer, was the owner of copyright in the disputed song as well as in its underlying works, which included its musical composition.

(iii) Section 17[8], read with Section 2(f)[9] of the Copyright Act

[8] **17. First owner of copyright**.—Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that

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(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

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Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of Section 13;

made the producer of a cinematographic film the first owner of copyright in all sound recordings, literary works and musical works forming part of the film. The producer, thereby, was conferred exclusive rights to assign copyright in the sound recordings, literary works and musical works contained in the film to a third party. In exercise of these rights, RCA had, under agreement dated 25 February 1980, assigned the copyright in the sound recordings, musical and literary works contained in the film *Moodu Pani* to SIL.

(iv) Ilaiyaraaja, undoubtedly, was the composer of the original disputed song and, therefore, the author of the musical work embodied therein. However, as the song was made for, and was a part of the cinematographic film *Moodu Pani*, RCA, by operation of clause (b) of the first proviso to Section 17 of the Copyright Act, became the first owner of copyright in the musical and literary works contained in the film, which included the disputed song. RCA had assigned copyright in the sound recording of the disputed song to SIL and, thereby, SIL became the subsequent owner of copyright in the literary and musical works contained in the disputed song. Ilaiyaraaja ceased to remain owner thereof, and ceased to have any copyright in the disputed song.

(v) Ilaiyaraaja could not, therefore, have licensed the

[9] (f) "cinematograph film" means any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;

copyright in the disputed song to VFIL, after the execution of the agreement dated 25 February 1980. VFIL's claim to copyright in the disputed song, on the basis of the purported assignment thereof by Ilaiyaraaja was, therefore, not sustainable.

(vi) Moreover, Ilaiyaraaja was not the author of the literary work, i.e., the lyrics, contained in the disputed song.

(vii) VFIL was, therefore, by recreating the disputed song for its film *Aghathiyaa*,

(viii) infringing the copyright of SIL in the disputed song.

(ix) The infringing song could not be treated as an "adaptation" within the meaning of Section 14(a)(vi) of the Copyright Act, as VFIL had not made any arrangement or transcription as was required in order to make an "adaptation" within the meaning of the expression as defined in Section 2(a)(iv)[10] of the Copyright Act.

(x) Based on these assertions, SIL, in the suit, has sought a decree of permanent injunction, restraining the defendants in the suit, i.e. VFIL, DTPL and Ilaiyaraaja, from dealing with the disputed song or the musical composition contained therein in any manner whatsoever. Additional claims for damages and costs

[10] (a) "adaptation" means,—

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(iv) in relation to a musical work, any arrangement or transcription of the work;

have also been made.

10. VFIL contended, before the learned Single Judge, *per contra*, as under:

(i) As the composer of the disputed song, Ilaiyaraaja was its author and, thereby, the owner of the underlying musical work contained therein.

(ii) Under the license agreement dated 17 March 2023, executed with Ilaiyaraaja, VFIL was a *bona fide* third party licensee of the underlying musical and literary work contained in the disputed song.

(iii) It was, therefore, in exercise of the rights conferred by Section 14(a)(v) and (vi) of the Copyright Act that VFIL created a new sound recording which was an adaptation of the original disputed song. The ownership of the new sound recording in the disputed song, therefore, enured to the benefit of VFIL.

(iv) Even after the disputed song was incorporated in the film *Moodu Pani*, Section 13(4)[11] of the Copyright Act protected the copyright of the original author in the musical/literary work contained in the disputed song.

[11] (4) The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the sound recording is made.

(v) Ilaiyaraaja, therefore, continued to retain ownership over the copyright in the disputed song and, therefore, had lawfully licensed the copyright in the disputed song to VFIL on 17 March 2023.

(vi) Thereby, the right to make an adaptation of the disputed song, available under Section 14(a)(vi) was also transferred to VFIL.

(vii) In these circumstances, SIL's reliance on Section 14 of the Copyright Act was unfounded.

(viii) If SIL's understanding of Section 17 were to be accepted, it would render Section 13(4) of the Copyright Act otiose.

(ix) SIL had sought to contend that Ilaiyaraaja would be entitled to exercise any copyright in respect of the disputed song under Section 14(a) only after 2012 as the second proviso to Section 17 had been added only in 2012. This construction was not acceptable as it would render Section 13(4) of the Copyright Act redundant.

(x) Besides, the second proviso to Section 17 of the Copyright Act was only clarificatory in nature and did not create any new right.

(xi) SIL had conceded that all rights under Section 14(a), other than the right to make a cinematographic film sound recording, were retained by the original author of the underlying musical and literary works. The original author of the underlying musical work in the disputed song was, unquestionably, Ilaiyaraaja.

11. In support of its submissions, VFIL relied on the judgment of a learned Single Judge of this Court in ***RDB and Co. (HUF) v. Harpercollins Publishers India Pvt. Ltd***.[12], which was upheld by the Division Bench in ***RDB and Co. (HUF) v. Harpercollins Publishers India Pvt. Ltd***[13]**.**

12. Ilaiyaraaja contended, before the learned Single Judge, as under:

(i) As the composer of the disputed song, Ilaiyaraaja was the owner of the musical work contained therein.

(ii) As a result, under Section 14(a)(vi), Ilaiyaraaja had exclusive right to create, and to authorize the creation of, any adaptation of the musical work contained in the disputed song.

(iii) The song which was slated to be used in the film *Aghathiyaa* was only an adaptation of the musical work

[12] **2023 SCC OnLine Del 3046**
[13] **2023 SCC OnLine Del 7165**

contained in the disputed song, of which the rights remained with Ilaiyaraaja.

(iv) Under Section 17 of the Copyright Act, the author of a musical work is the first owner of the copyright therein. The composer is, as defined in Section 2(d)(ii)[14] of the Copyright Act, the author of a musical work. As such, Ilaiyaraaja, as the composer of the disputed song, was its author and the first owner of copyright therein.

(v) This vested, with Ilaiyaraaja, all rights envisaged by Section 14(a), which included the right to make an adaptation of the musical work, under clause (vi) thereof.

(vi) SIL admitted that Ilaiyaraaja had adapted, in the song which was slated to be released in the movie *Aghathiyaa*, the musical work in the disputed song *En Iniya Pon Nilave*.

(vii) Ilaiyaraaja had not assigned the copyright in the musical work to any person. He had only assigned a limited right to use the musical work for synchronisation to RCA.

(viii) Section 13(4) protected the separate copyright of the author of the composition contained in a musical work even

[14] **2. Interpretation.**

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(d) "author" means,—

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(ii) in relation to a musical work, the composer;

after the musical work was included in a sound recording or in a cinematographic film.

(ix) The reliance, by SIL, on clause (b) of the first proviso to Section 17, was misplaced. The requisite pleadings, to make out such a case, were absent in the plaint. The plaint did not plead that the disputed song had been composed by Ilaiyaraaja for valuable consideration at the instance of SIL or of RCA.

(x) Even otherwise, Section 17 did not envisage divesting of the composer of the musical work of his right as author thereof, on the musical work being permitted to be used in a cinematographic film against valuable consideration. The right of the composer to make an adaptation of the musical work under Section 14(a)(vi) subsisted.

(xi) The judgments of the Supreme Court, on which SIL relied, did not deal with the issue of whether a composer could adapt a song under Section 14(a)(vi) after the song had been synchronised in a cinematographic film.

(xii) The second proviso to Section 17 preserved intact Ilaiyaraaja's copyright in the musical work in the disputed song. It clarified that the right was not defeated by SIL's right in the cinematographic film, if any. In fact, in its decision in ***Indian Performing Rights Ltd. v. Rajasthan Patrika Pvt. Ltd.***[15]**,** the

[15] **2023 SCC OnLine Bom 944**

High Court of Bombay had held that the second proviso to Section 17 nullified clauses (b) and (c) of the first proviso.

(xiii) The first proviso to Section 17, and its various clauses, only affected Section 13(1)[16] of the Copyright Act and did not affect the rights of Ilaiyaraaja, available under Section 14 thereof.

(xiv) As a result, RCA did not possess any copyright in the musical work contained in the disputed song. The entire copyright in the song, as well as in the underlying musical work contained therein, continued to vest in Ilaiyaraaja. RCA could not, therefore, have assigned any right in the musical work for exploitation thereof to any other person.

C. The Impugned Judgment

13. The learned Single Judge has, after noting the rival contentions before her, proceeded to analyse and reason various aspects involved, thus:

> "26. It is to be noted that in view of the provisions of Section 13(4) of the Copyright Act, which states categorically that copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which, the film or the record, is made, the defendant no. 3 as the music composer, is entitled to perform various acts as copyright owner in terms of

[16] **13. Works in which copyright subsists**. –
(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—
(a) original literary, dramatic, musical and artistic works;
(b) cinematograph films; and
(c) sound recording.

Section 14(1)(a) of the Copyright Act, otherwise than as a part of a cinematograph film.

27. The defendant no. 3, as music composer of the song in question, in view of Section 17, proviso (b) of the Copyright Act, has already exhausted his right under Section 14(1)(v) of the Copyright Act. However, the defendant no. 3 is entitled to carry out all the other acts in terms of Section 14(1)(a) of the Copyright Act, except to make any cinematograph film or a record in respect of the musical work.

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29. Considering the definition of author, as given in Section 2(d) and provisions of Section 17 proviso (b) of the Copyright Act, it is clear that in case of soundtrack/sound recording, which forms part of a cinematograph film, the producer of the film is the author, who shall be the first owner of the copyright therein, in the absence of any agreement to the contrary. However, the right of the composer of the music shall be safeguarded in terms of Section 13(4) and 14(1) of the Copyright Act, otherwise than as a part of the cinematograph film. Meaning thereby, the rights of the music composer, which is part of a cinematograph film, in terms of Section 14(1) of the Copyright Act, shall include the right to carry out all the acts, except to make any cinematograph film or a record in respect of the work as envisaged under Section 14(1)(v), as the said right of the music composer gets exhausted in terms of Section 17 proviso (b) of the Copyright Act.

30. It is also to be noted that the copyright in the song, which vests with a producer of the film, includes the musical work, the literary work, i.e., the lyrics, and the sound recording, which includes, musical composition as well as lyrics. The defendant no. 3, as the music composer, has no copyright over the literary work, i.e., the lyrics or the sound recording. Therefore, having no rights over the lyrics of the song, there is no question of defendant no. 3 having any right to assign rights in the lyrics of the song to a third party. In the present case, on the basis of the agreement with defendant no. 3, the defendant no. 1 has used the lyrics and musical composition of the song, in order to recreate the sound recording of the said song. In the absence of any rights in the lyrics of the song, the defendant no. 3 was not entitled to assign any right with respect thereto. Thus, on this account also, the defendant no. 1 is not entitled to claim any right on the basis of an agreement with the defendant no. 3.

31. This Court cannot accept the contention of defendant no. 3,

i.e., the music composer, that in view of second proviso to Section 17, which has been inserted by way of amendment of the year 2012, he shall have right with effect from 2012. It is to be noted that in terms of the second proviso to Section 17, which has been inserted in the year 2012, in case of any work incorporated in a cinematograph work, the same shall not affect the rights of the author in the work. The second proviso to Section 17, as inserted by the amendment of 2012, reads as under:

> 17. First owner of copyright.— Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:
>
> xxx xxx xxx
>
> [Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of section 13.]

32. Thus, as per the second proviso of Section 17, which has been inserted by way of an amendment of 2012, the right of a music composer of a song which is part of a cinematograph film, will not be affected. Accordingly, after the amendment of 2012, only if the music composer enters into a specific agreement with the producer of the film, that his rights shall be transferred to the producer of the cinematograph film. However, the present case pertains to a work before the 2012 amendment, and therefore, the said amendment is not applicable to the present case. The said amendment is prospective in nature and cannot be considered to operate in a retrospective manner.

33. As regards the contention that the song in question is in the nature of adaptation in terms of Section 14 of the Copyright Act, the same is totally misplaced. 'Adaptation' has been defined in Section 2(a) of the Copyright Act in relation to a musical work, any arrangement or transcription of the work. In relation to the music composition, 'adaptation' would connote arrangement of the music. However, in the present case, it is undisputed that the defendants have used the lyrics and music composition of the song in question and have caused a fresh recording of the same. In the absence of any right over the lyrics of the song, defendant no. 3, as the music composer, had no right to cause the use of the lyrics and claim the same to be adaptation of his work, which was confined to only music composition and not the literary work, i.e., the lyrics of the song.

34. It is undisputed that the defendant no. 3 is only the music composer and not the lyricist of the song in question. Therefore, the defendant no. 3 by no terms, can be considered as the author of the lyrics of the song in question, which forms part of the sound recording, in which the plaintiff has copyright in terms of agreement with the producer of the film in question. Thus, the defendant no. 3 had no authority to assign any right for use of the lyrics of the song, on which he has no copyright.

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36. The judgment relied upon by the defendants in the case of RDB (supra) is clearly distinguishable and does not apply to the facts and circumstances of the present case. The said judgment related to copyright in a screenplay and not musical and literary works incorporated in a sound recording/cinematograph film. The defendant in the said case was making a novel out of a screenplay of the original cinematograph film. The defendant was not making a new cinematograph film out of the screenplay. Whereas, in the present case, the defendant no.1 has made a new sound recording using the music and lyrics of the original song, for a cinematograph film.

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38. In view of the aforesaid detailed discussion, the plaintiff has made out a prima facie case that as per the terms of the plaintiff's agreement with the producer of the cinematograph film 'Moodu Pani', the plaintiff is the owner of the sound recordings and musical and literary works in the songs of the cinematograph film 'Moodu Pani', including the song 'En Iniya Pon Nilave'. Accordingly, it is held that the defendant no. 1 cannot use the said song, as recorded by it, without license from the plaintiff."

14. One may itemize the findings of the learned Single Judge, thus:

(i) The rights available to a copyright holder under Sections 13 and 14 of the Copyright Act were not absolute, but were subject to other provisions of the Copyright Act.

(ii) The composer of a musical work was unquestionably its author for the purposes of copyright, under Section 2(d)(ii) of the Copyright Act. Similarly, Section 2(d)(v)[17] made the producer of a cinematographic film the first owner of copyright in the film as well as in all sound recordings contained in the film.

(iii) Section 2(f) of the Copyright Act included, in the definition of "cinematographic film", the sound recording of the film.

(iv) Section 17 made the author of any musical work the first owner of copyright therein. However, this provision was subject to other provisions of the Copyright Act. The entitlements of a composer of a musical work as the first owner of the copyright in the musical work, contained in Section 17 was also, therefore, subject to other provisions of the Copyright Act.

(v) Clause (b) of the first proviso to Section 17 read with Section 2(f) ordained that, if a cinematographic film was made for valuable consideration at the instance of any person, then the producer of the cinematographic film became the first owner of the sound track associated with the cinematographic film. As

[17] **2. Interpretation.**

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(d) "author" means,—

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(v) in relation to a cinematograph film or sound recording, the producer;

such, the producer of a cinematographic film would be the first owner of copyright in the sound track of the film, which would include all musical works which were contained in the film.

(vi) Under the agreement dated 25 February 1980 executed between RCA and SIL, the copyright in the musical and literary works contained in the songs which were part of the cinematographic film *Moodu Pani* came to vest in SIL. SIL, thereby, became the owner of copyright therein.

(vii) In view of Section 13(4), therefore, Ilaiyaraaja, as the composer of the original song *En Iniya Pon Nilave*, was entitled to perform various acts as copyright owner *otherwise than any act which made it part of a copyright film*. The right otherwise available to Ilaiyaraaja under Section 14(a)(vi) of the Copyright Act had been exhausted by him, in view of clause (b) of the first proviso to Section 17.

(viii) Ilaiyaraaja could not, therefore, make a copyright film or a record in respect of the musical work contained in the disputed song, though he could exercise all other rights of a copyright owner therein.

(ix) As a result, VFIL was also not entitled to adapt or recreate the musical work contained in the disputed song. In doing so, therefore, VFIL had infringed the copyright of SIL therein.

D. Rival Contentions

D.I Submissions of Ms. Swathi Sukumar

15. Ms. Sukumar advances the following submissions:

(i) The impugned judgment correctly acknowledges the rights of Ilaiyaraaja in the musical work in the disputed song but erroneously denies, to Ilaiyaraaja, the benefit of the second proviso to Section 17 of the Copyright Act, on the ground that the proviso was inserted in 2012 and could not have retrospective effect. In so holding, the learned Single Judge has overlooked the fact that the cause of action for instituting the suit arose in 2025.

(ii) The judgment of the Supreme Court in ***Indian Performing Right Society Ltd v. Eastern Indian Motion Pictures Assn***[18] was not applicable, as it was rendered in the context of the unamended Copyright Act.

(iii) The decisions of the learned Single Judge and of the Division Bench of this Court in ***RDB*** were wrongly distinguished in the impugned judgment.

(iv) The main question that arose for consideration was, therefore, whether Ilaiyaraaja's exclusive right, under Section 14(a)(vi), to adapt the musical work contained in the disputed

[18] **(1977) 2 SCC 820**

song and, therefore, to assign the adapted work to another, could be defeated by SIL's alleged right in the cinematographic film under Section 14(d)[19].

(v) In view of the fact that Ilaiyaraaja was admittedly the author of the musical work, and no assignment or agreement had been executed by Ilaiyaraaja in respect thereof, Ilaiyaraaja would be entitled to the benefit of the second proviso to Section 17, as the cause of action for instituting the suit arose in 2025, which was when the alleged infringement took place.

(vi) The plaint proceeded on a presumption that, on integration of the disputed song into the film *Moodu Pani*, there was a deemed transfer of Ilaiyaraaja's rights in the musical work in the disputed song to RCA as the producer of the cinematographic film. This was a fundamentally erroneous presumption.

(vii) There was no pleading, by SIL, that the disputed song had been created by Ilaiyaraaja for valuable consideration *at the instance of* RCA, or that RCA had commissioned Ilaiyaraaja to compose the song, as is contemplated by clause (b) of the first

[19] **14. Meaning of copyright**.—For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

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(d) in the case of a cinematograph film,—
(i) to make a copy of the film, including—
(A) a photograph of any image forming part thereof; or
(B) storing of it in any medium by electronic or other means;
(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;
(iii) to communicate the film to the public;

proviso to Section 17 of the Copyright Act, or that the song was created during the course of employment of Ilaiyaraaja with RCA as envisaged by clause (c) of the first proviso.

(viii) Under the Copyright Act, therefore, Ilaiyaraaja, as the first owner of copyright in the musical work contained in the disputed song, enjoyed all exclusive rights available to an owner of copyright under Section 14(a) read with Section 2(d)(ii), which included the right to adapt the musical work. Ilaiyaraaja enjoyed these rights to the exclusion of SIL's right under Section 14(d).

(ix) Under Section 14(a)(vi), Ilaiyaraaja had the exclusive rights to make adaptation of the musical work contained in the disputed song.

(x) The rights of the producer of the cinematographic film *Moodu Pani* under Section 14(d) did not include the right to adapt the underlying musical work which remained with Ilaiyaraaja. As RCA did not possess any such right, SIL could also not lay claim thereto.

(xi) The Copyright Act did not envisage deemed transfer of all substantive rights available to an owner of copyright in a musical work under Section 14(a), in favour of the producer of a cinematographic film in which the musical work was synchronized.

(xii) Moreover, Ilaiyaraaja's copyright was also protected by Section 13(4).

(xiii) In view of the second proviso to Section 17, Ilaiyaraaja's right in the musical work were not affected by clause (b) or clause (c) of the first proviso thereto.

(xiv) The second proviso was only a beneficial clarification of what was already contained in Section 13(4), 14(a) and 17 of the Copyright Act.

(xv) Ilaiyaraaja had, therefore, in lawful exercise of the copyright which vested in him in the musical work contained in the disputed song, assigned the right to make an adaptation of the disputed song to VFIL.

16. For all these reasons, Ms. Sukumar submits that the impugned judgment is unsustainable in law and deserves to be set aside.

D.II Submissions of Mr. J Sai Deepak

17. Arguing *per contra*, on behalf of SIL, Mr. J Sai Deepak, learned Senior Counsel, submits as under:

(i) The disputed song *En Iniya Pon Nilave* was created by Ilaiyaraaja at the instance of RCA. As a result, RCA was the first owner of the copyright in the musical work under clause (b) of the first proviso to Section 17.

(ii) Moreover, SIL's ownership over the disputed song was also statutorily presumed under Section 55(2)[20] of the Copyright Act, as SIL was reflected as the owner and publisher of the disputed song in the inlay cards of the LPs[21] on which the song of the film *Moodu Pani* were released.

(iii) The Supreme Court had held, in ***IPRS*****,** that the producer of a cinematographic film could defeat the rights of the composer/lyricist of the musical works contained in the film. This principle was adopted and followed by the High Court of Madras in ***Indian Record Manufacturing Co. v Agi Music Sdn Bhd***[22].

(iv) It was clear that RCA had commissioned Ilaiyaraaja for incorporation of the music in the sound track of the film *Moodu Pani*, which included the disputed song *En Iniya Pon Nilave*. Ilaiyaraaja had not disputed the fact that he had received valuable consideration by way of recompense. By operation of clause (b) of the first proviso to Section 17 of the Copyright Act, therefore, RCA was the first owner of copyright in the disputed song.

(v) Ilaiyaraaja's right under Section 14(a), therefore, stood

[20] (2) Where, in the case of a literary, dramatic, musical or artistic work, [or, subject to the provisions of sub-section (3) of Section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears] on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is provided, to be the author or the publisher of the work, as the case may be.

[21] Long Play records

[22] 2020 SCC OnLine Mad 626

exhausted on his contracting with RCA for incorporation of the disputed song in the sound track of the cinematographic film *Moodu Pani* in view of clause(b) of the first proviso to Section 17.

(vi) As such, Ilaiyaraaja's stand that he had not been commissioned to create the song by RCA was frivolous.

(vii) VFIL had made an entirely new recording of the song which could not be treated as an "adaptation".

(viii) Moreover, Ilaiyaraaja also licensed, in favour of VFIL, the sound recording and literary work in the film *Moodu Pani*, over which he had no rights.

(ix) Ilaiyaraaja could not seek to avail the benefit of the second proviso to Section 17 or the third proviso to Section 18 of the Copyright Act, as these were introduced only in 2012, and were prospective in nature. They could not, therefore, affect or impact the effect of the agreement dated 25 February 1980 between RCA and SIL.

E. Analysis

E.I The Issue in controversy

18. The core controversy centres around the situs of the copyright in the disputed song.

E.II Rival Stands

19. SIL contends that

(i) RCA was the "author" of the cinematograph film *Moodu Pani*, as defined in Section 2(d)(v),

(ii) as the author of the cinematograph film, RCA was the first owner of copyright in the cinematograph film,

(iii) "cinematograph film" is defined, in Section 2(f), as including the sound recordings in the cinematograph film,

(iv) RCA was, thereby, also the first owner of copyright in the sound recordings contained in the cinematograph film *Moodu Pani*,

(v) SIL, as the assignee of the copyright in the cinematograph film from RCA, was, therefore, the first owner of copyright in the sound recordings contained therein, which included the sound recording of the disputed song *En Iniya Pon Nilave*,

(vi) the right to adapt the sound recording, therefore, vested in SIL under Section 14(a)(v), and

(vii) Ilayaraaja had, therefore, infringed SIL's copyright by remaking/adapting the song, and in contracting with VFIL, permitting the use of the adapted song in the film *Agathiyaa*.

20. Additionally, SIL has also invoked clause (b) of the first proviso to Section 17 to contend that Ilayaraaja's copyright in the disputed song, even if it existed, stood divested by operation of this clause.

21. This line of argument has found favour with the learned Single Judge, in the impugned judgment.

22. Ilayaraaja contends, *per contra*, that

(i) the disputed song constitutes a "musical work" as defined in Section 2(p)[23] of the Copyright Act,

(ii) as the composer of the musical work, Ilayaraaja is its "author" by virtue of Section 2(d)(ii),

(iii) Ilayaraaja was, therefore, the first owner of copyright in the musical work contained in the disputed song, under Section 17,

(iv) in the absence of any pleading to the effect that the ingredients of clause (b) or (c) of the first proviso to Section 17 applied, this right was not divested,

(v) moreover, the right of Ilayaraaja as the first owner of copyright in the musical work contained in the disputed song

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

also stood protected by Section 13(4) and the second proviso to Section 17,

(vi) Ilayaraaja had, therefore, exclusive right to adapt the musical work contained in the disputed song, under Section 14(a)(v), and

(vii) having thus lawfully adapted the musical work contained in the disputed song, Ilayaraaja, therefore, lawfully allowed VFIL to use the adapted musical work in the film *Agathiyaa*.

23. Apropos the applicability of the second proviso to Section 17, whereas Ilayaraaja relies on the second proviso, SIL contends that it does not apply, as it is only prospective from the date of its insertion which took place in 2012.

24. The battle-lines stand, thus, clearly drawn and delineated.

E.III Our view

25. To our mind, the answer to the imbroglio is to be found in the provisions of the Copyright Act, outside which it is hardly necessary to peregrinate.

26. Section 2(p)

"Musical work" is defined, in Section 2(p) as a work consisting of music, excluding lyrics. There is, therefore, statutorily, no distinction between the "musical work" and the music which forms part thereof

(the other part being the lyrics). As such, the musical component of the disputed song, of which Ilayaraaja is undisputedly the composer, is a musical work, in which, by virtue of Section 13(1)(a), copyright vests.

27. Section 17

27.1 Section 17 makes the author of a work the first owner of copyright in the work. Of course, Section 17 is expressly made subject to other provisions of the Copyright Act.

27.2 The "author", in the case of a musical work, is its composer, as defined in Section 2(d)(ii).

27.3 As the composer of the disputed song, therefore, Ilaiyaraaja was the author of the "musical work" forming part thereof, i.e., the musical component of the disputed song. By operation of Section 17, therefore, he was the first owner of copyright in the musical work in the disputed song.

27.4 Clauses (b) and (c) of the first proviso to Section 17 do not, in our opinion, apply, for the following reasons:

(i) Clause (b) does not apply either to sound recordings or to musical works.

(ii) Clause (c) applies where the work is made in the course

of its author's employment under a contract of service or apprenticeship. It is nobody's case that there was any "contract of service" between RCA and Ilaiyaraaja. A "contract of service", legally, connotes the existence of a relationship of master and servant. No such contract existed between RCA and Ilaiyaraaja, nor is there any pleading by SIL to that effect.

28. Ilaiyaraaja's right under Section 14(a)

28.1 As the first owner of copyright in the musical work in the disputed song, Ilaiyaraaja possessed the exclusive right, under Section 14(a)(vi), to make any adaptation of the musical work. "Adaptation", as defined in Section 2(a)(iv) in the context of a musical work, includes any arrangement or transcription of the musical work. *However, this right of adaptation was limited to the musical work, i.e., the musical component of the disputed song, as that was the extent of Ilaiyaraaja's copyright in the disputed song. The lyrics of the disputed song were no man's land, and Ilaiyaraaja would have no copyright over the lyrics and, consequently, none of the rights envisaged under Section 14(a) would be available to Ilaiyaraaja in so far as the lyrics in the disputed song were concerned*.

28.2 Section 14(a)(vi) also conferred, on Ilaiyaraaja, the exclusive right to do, in relation to any adaptation of the musical work contained in the disputed song, any of the acts specified in relation to the work in sub-clauses (i) to (vi). Of these, Section 14(a)(iv) included the right to make any cinematographic film or sound recording in respect of the

adapted musical work.

28.3 Ilaiyaraaja was, therefore, entitled to contract with any third party for use, or for adaptation, *of the musical work contained in the disputed song, i.e, the musical component thereof. That right could not, however, extend to doing anything involving the sound recording of the disputed song, or the lyrics thereof. Copyright in the sound recording of the disputed song would, by a conjoint application of Section 17, 2(d) and 2(f), vest in the producer of the film of which the song constituted part of the soundtrack, whereas copyright in the lyrics of the disputed song would, by application of Section 2(d)(i)*[24]*, vest in the lyricist.*

29. SIL's copyright in the sound recording of the disputed song, vis-à-vis Section 13(4)

29.1 SIL has sought to contend that, by virtue of the definition of "cinematograph film" in Section 2(f), the sound recording accompanying a cinematograph film was also included within the definition of "cinematograph film". There can be no cavil with this contention.

29.2 Ergo, submits SIL, the sound recordings contained in the various songs in the film *Moodu Pani* were also contained within the ambit of the expression "cinematograph film". There can be no cavil with this proposition either.

[24] (d) "author" means,—
(i) in relation to literary or dramatic work, the author of the work;"

29.3 Section 13(4), however stipulates that the copyright in a cinematograph film or a sound recording would not affect the separate copyright in any work in respect of which, or in respect of a substantial part of which, the film, or the sound recording, is made.

29.4 The plea of infringement, raised by SIL, is predicated on the copyright claimed to be held by it in the sound recording of the disputed song, as a consequence of the copyright held by it in the cinematograph film *Moodu Pani*. Inasmuch as (i) RCA was the producer of the film *Moodu Pani* and was, therefore, the author of the copyright in the cinematograph film, (ii) RCA was also, therefore, the author of the sound recordings in the cinematograph film, which included the sound recording of the disputed song *En Iniya Pon Nilave*, and (iii) RCA had, therefore, competently assigned the copyright in said sound recording to SIL under the Agreement dated 25 February 1980, SIL is correctly claiming copyright in the sound recording in the disputed song.

29.5 By operation of Section 13(4), the copyright, if any, held by RCA and, later, by SIL, in the sound recording relating to the musical work contained in the disputed song cannot derogate from, or affect, the separate copyright held by Ilaiyaraaja *in the musical work contained in the disputed song*. Ilaiyaraaja's copyright in the musical work contained in the disputed song, therefore, continues to remain protected and, consequently, his right to exploit the musical work in the manner envisaged by Section 14(a)(iv) and 14(a)(v) read with

14(a)(vi), also remains inviolate and sacrosanct.

29.6 This right was, however, necessarily limited to *the musical component of the disputed song, i.e., the music therein, of which Ilaiyaraaja was the composer*. *It did not extend to the lyrical component of, or the sound recording in, the disputed song.*

30. And it is there that the scales tilt.

31. Agreement dated 17 March 2023 between Ilaiyaraaja and VFIL

31.1 The Agreement dated 17 March 2023, between Ilaiyaraaja (referred to as the "Licensor") and VFIL (referred to as "the Producer") deserves, at this juncture, to be reproduced, in full, as under:

> "AGREEMENT
>
> This agreement is entered into at Chennai on 17th March 2023 by and between
>
> Ilaiyaraaja, Music Director, residing at 2-C, Murugesan Street, T.Nagar, Chennai - 600027, bearing PAN Card No. AAEPR5028Hand GST Number: 33AAEPR5028H1ZT (hereinafter known as "Licensor", which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of One Part;
>
> AND
>
> VELS FILM INTERNATIONAL LIMITED, a company incorporated in India under the Companies Act, 2013, having its registered office at 521/2, Nandanam, Anna Salai, CHENNAI 600035 and holding PAN AAHCV1475C and GST No: 33AAHCV1475C1ZK represented by its Managing Director Dr. Ishari K Ganesh (hereinafter referred to as the "PRODUCER".

which expression, unless repugnant to the context or meaning thereof, is deemed to include its successors and assigns) of the Second Part;

Licensor and Producer hereinafter may be referred to individually as the “Party” and collectively as the “Parties”.

WHEREAS

A. Licensor has represented to the Producer that the Licensor is the owner and copyright holder of the Sound Recording titled "En Iniya Pon Nilave" from the Tamil language film titled 'Moodu Pani' ("Original Song") composed by Ilayaraja and performed by K J Yesudas and relying on the representation of the Licensor, Producer has agreed to obtain license from the Producer to (i) recreate the Sound Recording and Underlying Works of the Original Song and its underlying works and this recreated version and any of its derivatives shall hereinafter be referred to as "New Sound Recording" and "New Underlying Works" respectively; and to (ii) synchronize the New Sound Recording and the New Underlying Works in a Tamil, Telugu & any other langauge cinematograph film titled "Moodu Pani " ("Film") of the Producer including without limitation to its clips, promos, trailers, etc.

B. The Parties have agreed to record the terms with respect to recreation of the Original Song, synchronization of the New Sound Recording and New Underlying Works in the Film and communication and exploitation of the said New Sound Recording and New Underlying Works in connection with the Film and/or on a stand alone basis across all Modes, Media and Formats (defined in Annexure I).

NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED by and between the parties hereto as follows:

1) LICENSE

1.1 Licensor hereby grants to Producer the either as a whole or in parts and independently or otherwise the sole, exclusive, irrevocable and unconditional license to the Original Song and its underlying works (i) adapt and recreate the Original Song and its underlying works and (ii) synchronize the New Sound Recording and the New Underlying Works in the Film and including without limitation to its clips, promos, trailers, etc. and to exploit the New Sound Recording and the New Underlying Works, in any manner Producer so chooses for the full period of copyright and thereafter in perpetuity (“Term”) for the territory of the world (“Territory”).

1.2 The Producer shall in its sole discretion shall have the right to engage any other party(ies) for the re-creation and/or adaptation of the Original Song and its underlying works for the creation of the New Content in the manner the Producer may deem fit.

1.3 It is agreed by the Licensor that the Producer shall be the owner of the copyright of the New Sound Recording and the New Works (as defined below) as per Section 14 of the Copyright Act, 1957 and Rules thereto (as amended from time to time) for the Term and Territory. Producer shall have all the rights (including copyright) in the New Sound Recording and the New Works fully without any constraints, claims or overlaps from the Licensor, on both master and publishing. Producer shall have the right to use the New Sound Recording, New Underlying Works or parts thereof, as a part of the Film/the Film's soundtrack, or as a song video, or audio or any other cinematograph film and the Producer may deal with the same in the manner the Producer may deem fit.

1.4 Producer shall also have all the rights to use/exploit the Works including by dubbing in any languages worldwide, as deemed fit by the Producer. Producer shall also have the right to exclusively license/assign the Works to other third parties without procuring approval from the Licensor. Producer may exploit the New Sound Recording on all modes, mediums, technology and formats now in existence and commercial use or which may come into existence and commercial use in the Territory during the Term. Producer shall have the right to record, re-record, adapt, create, re-create, translate, remake, re-perform, adapt, dub, re-mix, sub-title, mash-up, sync, modify so as to make multiple, cover(s)/reprise version/ derivatives of the Works including parts and portions of sample usage from the Original Song, right to sample usage of the Original Song as is, to feature as part of the original soundtrack of the Film and independent of the same for any exploitation ala carte or otherwise in any manner mode and medium now and hereinafter known.

1.5 Exercise any and all rights as the owners of the Works as available under the Copyright Act including but not limited to the right, in perpetuity, to assign/license/sub-license the Works to third party(ies) for the purpose of exploitation in any manner as shall be deemed fit by the Producer.

1.6 Parties herein agree that Producer shall be the sole owner of the entire copyright and publishing rights in the New Sound Recording, new audio visual recordings and any additional/new music or lyrics added to the New Sound Recording ("New

Underlying Works") (jointly referred to as "Works"), as featuring in Film or on a standalone basis for the Term and Territory with the right to exploit the same in any manner mode or medium now or hereinafter known, including the right to, sub-assign, license, synchronize or deal with the same in any manner, as the Producer so desires without any restrictions or limitations whatsoever. The Publishing rights in these New Underlying Works featuring in the New Sound Recording shall be solely owned by the Producer.

1.7 The Licensor expressly agrees and acknowledges that the provision of Section 19(4) of the Copyright Act, 1957, as amended or any other equivalent provision is specifically excluded and expressly waived off.

2) CONSIDERATION

2.1 For the rights granted by the Licensor hereunder, the Producer shall pay the Licensor a sum of Rs 5,40,000/- (Rupees Five Lacs forty thousand only) including GST wide Cheque No:- 000916.,, Date: 17.03.2023, The Consideration paid shall be subject to deduction of applicable tax at source under the Income Tax Act, 1961.

2.2 The Consideration shall be paid [Please provide tranches] and subject to receipt of invoice from the Licensor.

3) CREDITS-

The Licensor shall be given due credits for the Original Song in the end credit roll of the Film as stated below:
En Iniya Pon Nilave " Song

Performed by: KJ Yesudas
Original Lyrics: En Iniya Pon Nilave
Licensed Courtesy: Ilaiyaraaja

4) WARRANTIES AND REPRESENTATIONS

Both Parties represent that they have all the power and authority to enter into this Agreement and to perform their obligations hereunder; and that the execution, delivery and performance of this Agreement will not contravene or result in the breach of any contract or any provision of any agreement or instrument to which it is a party or by which is bound and shall also not be in breach of their respective constitutional documents.

Licensor represents and warrants that it is fully authorized and entitled to grant the rights specified in the Agreement herein to Producer and owns, controls and/or administers all necessary rights in the Original Song and the underlying works thereof and that no consents or releases from any person, or of any third person or entity are or will be required. Producer's use of Original Song in the manner provided herein will not violate any rights of any kind or nature whatsoever of any person, firm, corporation, association, society or other entity.

Both Parties shall at all times comply with the provisions of applicable law.

5) INDEMNITY AND LIMITATION OF LIABILITY

Both Parties shall fully indemnify and hold each other, as harmless from and against any and all claims, demands, causes of action, obligations, liability, loss, damage, cost and/or expenses arising out of any breach of the terms and conditions of this Agreement, including the representations and warranties under this Agreement. Notwithstanding the aforesaid, the Licensor agrees to indemnify and hold the Producer and its assigns indemnified and harmless against any claims pertaining to the infringement of copyright or rights of any party in connection with the Sound Recording and Underlying Works licensed hereunder. The Licensor shall solely be responsible towards resolving any claims pertaining to the aforestated at its sole cost enable the Producer to exploit the New Sound Recording and New Underlying Works freely at all times.

6) CONFIDENTIALITY

Both Parties shall at all times keep the terms of this Agreement confidential, save and except as required by law. Any public announcement relating to the subject matter of this Agreement by Licensor shall be made after prior approval of Producer.

7) GOVERNING LAW & JURISDICTION

7.1 This Agreement shall be governed and construed in accordance with the laws of India.

7.2 The competent court at Chennai in India, shall have jurisdiction over any issues arising out of this Agreement.

8) GENERAL CONDITIONS

8.1 This Agreement is binding upon and shall inure to the benefit of the respective successors and assigns of each Party hereto. This Agreement, at the election of the Producer shall inure to the benefit of its administrators, successors, assigns, licenses, grantees, and affiliates, and Licensor agrees that the Producer and any subsequent assignee may freely assign and grant its rights hereunder, in whole or in part, to any person, firm or Corporation.

8.2 A waiver by any Party of any term or condition of this Agreement in a particular instance shall not be deemed or construed to be a waiver for the future.

8.3 This instrument constitutes the entire agreement between the Parties on this subject matter and cannot be modified except by written instrument signed by the Parties hereto.

8.4 Any stamp duty, if applicable, shall be solely borne and paid for by the Producer.

8.5 If any provision of this Agreement is invalid, unenforceable or prohibited by law, this Agreement shall be considered divisible as to such provision and such provision shall be inoperative and shall not be part of the consideration moving from any Party hereto to the others, and the remainder of this Agreement shall be valid, binding and of like effect as though such provision was not included herein.

8.6 All notices, requests, consents and other communication under this Agreement shall be in writing and shall be sent either by (i) recognized courier services at addresses of respective Parties or (ii) E-mail, as mentioned hereinbelow. Any Notice given in accordance with point (i) above, shall be deemed to have been given three (3) days after having been sent and any Notices given in accordance with point (ii) above, shall be deemed to have been given immediately on receipt of acknowledgement or delivery of email, as the case may be

8.7 The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership. joint venture, agency or employment relationship between the Parties. This Agreement is on a 'principal to principal' basis

between the Parties. Neither Licensor nor Producer shall describe itself as an agent or representative of the other, or make any representations or give any warranties/ assurances to a person which may require such Party to undertake or be liable, whether directly or indirectly, for any obligation and or responsibility to a Person, or enter into contracts on behalf of the other Party

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

Ilaiyaraaja	Vels Film International Limited
Sd/-	Sd/-
Music Director/Proprietor	Managing Director"

31.2 This Agreement poses a variety of issues. As is apparent from its covenants, Ilaiyaraaja represented himself, to VFIL, as the copyright holder *in the sound recording of the disputed song, as well as its underlying works*. The Agreement purports to assign, to VFIL, the copyright in the sound recording of the disputed song, as well as its underlying works.

31.3 However, *Ilaiyaraaja was not the owner of copyright in the sound recording, or the lyrics underlying the disputed song. His copyright was limited to the musical work, the very definition of which, in Section 2(p), excludes the lyrical component of the song. Ilaiyaraaja could not, therefore, have assigned, to VFIL, the lyrics underlying the disputed song.*

31.4 *Equally, Section 17 makes the author of a work the first owner of copyright therein. For a cinematograph film, the author is, per definition in Section 2(d)(v), the producer of the film. As such, RCA*

was the first owner of the copyright in the film Moodu Pani. "Cinematograph film" is defined, in Section 2(f), as including the sound recording accompanying the visual recording of the film. RCA was also, therefore, the first owner of copyright in the sound recordings contained in the film Moodu Pani. Ilaiyaraaja could not, therefore, have assigned, to VFIL, the sound recordings in the film Moodu Pani either, which would include the sound recording relating to the disputed song En Iniya Pon Nilave.

32. Agreement dated 25 February 1980 between Saraswathi Stores (SIL's agent) and RCA

32.1 The following covenants of this agreement (which refer to Saraswathi Stores as "the Company" and RCA as "the producer") merit reproduction:

> "2. The Producer shall at the Producer's own expense promptly after the completion of the Producer's films make available solely and exclusively to the Company for the purposes of the Agreement the sound-track or a recorded tape thereof.
>
> *****
>
> 4 (A) The Gramophone Company of India limited shall be the owner of the original plate within the meanings of the Copyright Act 1957 and any extensions or modifications thereof of any performance from which are made any records manufactured in pursuance of this Agreement recorded or re-recorded by the Company pursuant to Clause 2 or 3 (A) (a) or 3 (A) hereof.
>
> (B) The Producer hereby assigns and transfers and agrees to assign and transfer to The Gramophone Company of India Limited absolutely and beneficially for the world.

(i) the gramophone recording rights in all works the performances of which are made available to the Company under the terms of this Agreement and

(ii) the right to make or authorise the making of any record embodying the recordings in any part of the said soundtrack(s) associated with the Producer's films.

The Producer undertakes to execute or obtain the execution of such further assignments or assurances as The Gramophone Company of India Limited may from time to time require.

*****

5. The Producer hereby assures the company: -

(a) That the copyright and other rights in the works as mentioned in Clause 4 are or will be the Producer's free and unencumbered property immediately prior to their assignment or transfer to The Gramophone Company of India Limited.

*****

7.(A) Subject as hereinafter mentioned the Producer shall be entitled in respect of all records of contract recordings made available hereunder by the Producer and sold by the Company or by any individual firm company or corporation or other person authorised by The Gramophone Company of India Limited to a royalty on nett sales calculated on the retail price in the country of manufacture as follows:

(a) On a single 45-RPM record reproducing:

(i) On both sides contract recordings alone per record.

ii) On both sides contract recordings together with other recordings a proportion of per record according to the number of other recordings. In the case of such a gramophone record only one side of which reproduces a contract recording as aforesaid the amount of royalty shall be one-half of that set out above.

A single 46-RPM record shall mean as equivalent of a double sided ten inch 78-RPM record manufactured to play at a speed of 78-revolutions per minute.

(b) In the case of any other record the same shall be deemed to consist of section each section comprising one side of a single 45-RPM gramophone record or the equivalent thereof and royalty shall be calculated as above on each such section reproducing a contract recording. For this purpose the retail price of such other record shall be divided by the total number of sections. Where in the opinion of the Company it is impracticable to divide into sections a record containing other recordings in addition to the contract recordings each recording shall be timed in relation to the total playing time of the record and the royalty shall be calculated upon the same proportion of the retail price.

(c) Royalty payable in respect of a tape record shall be calculated and payable on the retail price as in the opinion of the Company is or would be appropriate for a disc record or records containing the same material and for the purpose of this Clause 7 sales of tape records shall be calculated separately from sales of disc records.

(d) Royalty as above shall be payable during currency of this Agreement and thereafter for 25 years.

(e) Records manufactured for the Company outside India on a custom pressing basis but intended by the Company primarily for sale in India shall for the purpose of this Clause 7 be considered as having been manufactured in India; similarly records so manufactured for any licensee of The Gramophone Company of India Limited outside the country in which such licensee shall have its main operating office but primarily intended for sale in such country shall be considered as having been manufactured in such country.

(B) In addition to the royalty on contract recordings provided for in Clause 7 (A) hereof the Company shall also pay to the Producer a copyright royalty of 5% per record in respect of sales of records containing performances of contract works. The provisions Clause 7 (A) shall apply to the calculation of the copyright royalty mutatis mutandis and in particular “contract works” shall be deemed to be inserted instead of the words “contract recordings" where such words appear.”

32.2 Thus, by this Agreement, copyright in the sound recordings

contained in the cinematograph film *Moodu Pani* was transferred to Gramophone Co. of India Ltd – which was later rechristened as SIL – for consideration in the form of a stipulated royalty.

33. The position that thus emerges is that

(i) copyright in the sound recordings in *Moodu Pani*, which would include the sound recording in the song *En Iniya Pon Nilave*, vested in RCA, and never resided in Ilaiyaraaja, and

(ii) RCA, by the Agreement dated 25 February 1980, transferred copyright in the said sound recordings to SIL.

SIL, thereby, became the owner of copyright in the sound recordings contained in the film *Moodu Pani*, which included the sound recording of the song *En Iniya Pon Nilave*.

34. Without a licence, or permission, from SIL, therefore, VFIL could not have exploited any of the sound recordings contained in the film *Moodu Pani*, including the sound recording relating to the song *En Iniya Pon Nilave*. By recreating/adapting the said sound recording, therefore, VFIL has infringed the copyright of SIL.

35. The learned Single Judge was, therefore, justified in passing the impugned order of injunction. Though our reasoning differs, on some minor aspects, with that of the learned Single Judge, we are in agreement on the ultimate outcome.

F. Conclusion

36. We, therefore, concur with the decision of the learned Single Judge.

37. The appeal is dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MAY 21, 2026
dsn/AR