

# Dispute Resolution Hotline

January 08, 2011

## A STITCH IN TIME SAVES NINE

**Delhi High Court rejects amendment application brought after 14 years from filing of copyright infringement suit**

### INTRODUCTION:

The Delhi High Court in the case of *Shriram Bharatiya Kala Kendra* (“**Plaintiff**”) –Vs- *Shubha Mudgal* (“**Shubha Mudgal**”) & Anr. (“**Defendants**”)<sup>1</sup> rejected an amendment application brought after 14 years from filing of the Suit, where Plaintiff sought to expand the scope of the suit to include infringement of copyright in 'musical work' when the original suit was filed claiming copyright in 'sound recording'.

### FACTUAL MATRIX:

Plaintiff commissioned Shubha Mudgal to compose certain musical pieces for a dance drama to be produced by Plaintiff under the title “*Meera*” for which she was paid consideration. She composed musical pieces to blend with the appropriate sequence of the dance drama and thereafter Plaintiff made sound recordings with the combination of music and lyrics (“**Sound Recordings**”). Plaintiff came across audio-cassettes (“**said cassettes**”) sold under the title “*Shubha Mudgal Ali More Angna*” in which Shubha Mudgal had sung the same composition, which she had composed for Plaintiff for the dance drama “*Meera*”.

Plaintiff in suit as originally filed contented that they were the owner of the copyright in the said Sound Recordings and had the exclusive right to (i) make any other sound recording embodying the said Sound Recording; (ii) to sell or give on hire or offer for sale and or hire any copy of the said Sound Recording, and (iii) to communicate the said Sound Recording to the public under Sec. 14 (1) (e) of the Copyright Act, 1957 (“the Act”). Therefore, Plaintiff contended that the Defendants were required to seek a license from Plaintiff for reproduction of any part of the Sound Recordings and were obliged to pay necessary royalties.

Plaintiff sought an injunction restraining the Defendants from reproducing or making re-recording of the said Sound Recording or any other sound recording which Shubha Mudgal may have undertaken for Plaintiff and also restraining the Defendants from holding out that they are authorized by Plaintiff to reproduce, market and sell the said cassettes and from passing off the musical compositions contained therein under whichever title as those of the Plaintiff.

### ISSUE:

The suit was filed by Plaintiff in the year 1996. The scope of the original suit was allegations of violation of Sec. 14 (1) (e) of the Act i.e. infringement of copyright subsisting in their Sound Recording. After 14 years Plaintiff brought about an application for amendment of Plaintiff, inter alia, pleading that music composed by Shubha Mudgal amounts to joint authorship and Plaintiff claimed ownership in musical works and on the basis of that the Plaintiff allege contravention of Sec. 14 (1) (a) of the Copyright Act, 1957 by the Defendants.

The Defendants opposed the amendment application on the following grounds:

- (i) By way of the proposed amendment, Plaintiff is seeking to claim joint ownership with Shubha Mudgal in the musical work which it had not claimed in the original Plaintiff;
- (ii) Plaintiff's claim for copyright in respect of the musical work is barred by limitation and now if Plaintiff were to file a fresh suit claiming copyright in respect of the musical work that would be hit by bar under Order II Rule 2 of Code of Civil Procedure, 1908 (“CPC”) as admittedly no leave under Order II Rule 2 was taken by Plaintiff from the Court.<sup>2</sup>

### COURT'S VIEW:

The Delhi High Court observed that:

(I) Plaintiff never intended to base their original claim on ownership of musical composition because it claimed the violation of its rights under Section 14 (1) (e) of the Act dealing with sound recording and not Section 14 (1) (a) of the Act which deals with the musical work.

(II) Plaintiff was not able to explain the delay of 14 years for bringing an amendment application and hence the Hon'ble Court held that the Plaintiff lacked *bona fide* in filing the proposed amendment application.

Therefore, the Court rejected the amendment application and said that the proposed amendment, if allowed would take away a vested right, which had accrued to the Defendants on account of bar under law of limitation.

The Court also observed that no such amendment can be allowed after the trial of the suit has commenced. In the present matter issues of the trial were already framed in the year 2006 and thus trial has already begun.<sup>3</sup>

The Delhi High Court re-iterated the settled position of law that an amendment should generally be allowed unless it is shown that permitting the amendment would be unjust and would result in prejudice to the opposite party which

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cannot be compensated by cost or would deprive him of a right which has accrued to him with the lapse of time. If there is no undue delay, no inconsistent cause of action is introduced and no vested interest or accrued legal right is affected and the application for amendment is not mala fide or will no prejudice the opposite party, the amendment should ordinarily be allowed.

The Delhi High Court quoted with approval the Supreme Court judgment in the case of *Shiv Gopal Sah alias Shiv Gopal Sahu -Vs.- Sita Ram Saraugi & Ors*<sup>4</sup>, which held that courts should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application, unless the Plaintiff can establish a reasonable rationale for delay as well as his own bona fides.

**ANALYSIS:**

In the present case the Plaintiff initially filed the suit alleging infringement of copyright in 'sound recording'. However, as is clear from the facts of the case, the Defendants had not used the Sound Recording of the Plaintiff but had created a new sound recording embodying the musical works composed by Shubha Mudgal.

It appears that upon realizing that it had little or no chance of succeeding in a suit for infringement of sound recording , the Plaintiff as an afterthought and that too after a passage of several years sought to claim joint ownership in the musical work with Shubha Mudgal.

The Delhi High Court rightly rejected such an attempt by the Plaintiff to improve their case.

This case clearly operates as a caveat to parties to ensure that all claims and reliefs are raised in the Plaint at the first instance to the greatest extent possible.

- **Debargha Basu, Vyapak Desai & Gowree Gokhale**

1 MANU/DE/3217/2010

2 Order II Rule 2 of CPC *inter alia* states that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action and therefore a person entitled to more than one relief in respect of the same cause of action may sue for all or any such reliefs but if he omits except with the leave of the Court to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

3 The law relating to amendment of pleadings is contained in Order VI Rule 17 of CPC which states that the Court may at any stage of the proceedings allow a party to alter or amend his pleadings on such terms as may be just and may be necessary for the purpose of determining the real question in controversy between the parties provided that no application for amendment shall be allowed after trial has commenced unless the Court comes to a conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial.

4 (2007) 14 SCC 120

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