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

+ CS(COMM) 763/2023

PHONOGRAPHIC PERFORMANCE LIMITED Plaintiff
Through: Mr. Chander M. Lall, Sr.
Advocate with Mr. Ankur Sangal, Mr.
Tejveer Singh Bhatia, Ms. Sucheta Roy, Mr.
Raghu Vinayak Sinha, Mr. Shaurya Pandey
and Ms. Yashi Agarwal, Advs.

versus

GOLA SIZZLERS PRIVATE LIMITED & ORS..... Defendants
Through: None

+ CS(COMM) 764/2023

PHONOGRAPHIC PERFORMANCE LIMITED Plaintiff
Through: Mr. Chander M. Lall, Sr.
Advocate with Mr. Ankur Sangal, Mr.
Tejveer Singh Bhatia, Ms. Sucheta Roy, Mr.
Raghu Vinayak Sinha, Mr. Shaurya Pandey
and Ms. Yashi Agarwal, Advs.

versus

SANDOZ RESTAURANTS
PRIVATE LIMITED & ORS. Defendants
Through: None

+ CS(COMM) 765/2023

PHONOGRAPHIC PERFORMANCE LIMITED Plaintiff
Through: Mr. Chander M. Lall, Sr.
Advocate with Mr. Ankur Sangal, Mr.
Tejveer Singh Bhatia, Ms. Sucheta Roy, Mr.
Raghu Vinayak Sinha, Mr. Shaurya Pandey
and Ms. Yashi Agarwal, Advs.

versus

TIM HORTONS, INC & ORS. Defendants
Through: Mr. N.B. Joshi, Mr. Vijay
Kasana, Ms. Chetna Singh, Mr. Abhijeet
Vikram Singh, Mr. Kshitij Chhabra, Mr.
Chirag Verma, Mr. Shivang Srivastava,
Advs. along with Mr. Sanjay Singh
Somwanshi, AR of the company

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER
% **20.10.2023**

CS(COMM) 763/2023, CS(COMM) 764/2023 and CS(COMM) 765/2023

1. The common plaintiff, in this batch of suits, Phonographic Performance Limited, owns and controls radio broadcasting and public performance rights for over 400 music labels, with over 45 Lakhs international and domestic sound recordings.
2. The plaintiff claims to be the owner of copyright in these recordings having been assigned the right in that regard by the original copyright owners under Section 18 of the Copyright Act, 1957. By virtue of the said assignment, exclusive entitlement to grant licenses for public performance of the said recording vests in the plaintiff.
3. The list of sound recordings which form the plaintiff's repertoire and in respect of which the plaintiff enjoys exclusive right to grant license are available on the plaintiff's website <https://www.pplindia.org/songs>.
4. The licenses for playing the recordings of the said songs are

issued by the plaintiff in terms of Section 30 of the Copyright Act at fixed tariffs. The tariff has also been thus provided in para 11 of the plaint.

RESTAURANTS NOT SERVING ALCOHOL		
Seating Capacity	Stand Alone Restaurants ₹ (Per Annum/Per Outlet)	Chain Restaurants ₹ (Per Annum/Per Outlet)
Below 20	4,500	7,000
21-40	8,500	10,000
41-60	11,500	15,000
Every Additional Seat above 60	₹ 100 Per seat will be applicable	₹ 200 Per seat will be Applicable
RESTAURANTS SERVING ALCOHOL		
Size of the Premises (Sq. Ft)	Annual Fees (A Class Cities ₹)	Annual Fees (Other Cities)
Upto 500 Sq. Ft.	50,000	25,000
501 – 1500 Sq. Ft.	1,00,000	50,000
1501 – 3000 Sq. Ft	2,00,000	1,00,000
3000 Sq. Ft and above	2,00,000 Plus ₹ 30 per Sq. Ft. For every Sq. Ft. more than 3000 Sq. Ft.	1,00,000 Plus ₹ 20 per Sq. Ft. for every Sq. Ft. more than 3000 Sq. Ft.
A Class Cities	Mumbai*, Delhi/NCR, Chennai, Kolkata, Bangalore, Hyderabad/ Telangana, Goa, Ahmedabad, Pune*, Chandigarh, Jaipur and Udaipur	
Other Cities	Apart from the above-mentioned A class cities, all others are categorized as other cities.	

5. The grievance of the plaintiff is that the defendants are playing the plaintiff's sound recordings, in which the plaintiff holds copyright and which forms part of the plaintiff's repertoire, as reflected in the aforesaid website <https://www.pplindia.org/songs>, without obtaining any license from the plaintiff.

6. The plaintiff claims to have sent various legal notices to the defendants in these cases, calling on them to take a license from the plaintiff before playing the recordings in which the plaintiff holds

copyright, but avers that these notices did not elicit any response except from Defendant 2 in CS (COMM) 765/2023.

7. Predicated on these allegations, the plaintiff, in these suits, seeks a decree of permanent injunction, restraining the defendants from playing recordings forming part of the plaintiff's repertoire as contained on its website <https://www.pplindia.org/songs>, without obtaining any license from the plaintiff.

8. Advance service of notice, in these suits, has been effected on the defendants. Mr. Joshi appears for the defendants in CS (COMM) 765/2023 is represented today on caveat. Caveat thus stands discharged.

9. Mr. Joshi has raised various preliminary objections, regarding territorial jurisdiction, the existence of any cause of action as well as the necessity of impleading other defendants in CS (COMM) 765/2023. Nonetheless, he has also submitted, on instructions, that his client is neither playing nor intends to play any of the recordings forming part of the repertoire of the plaintiff, as reflected on its website <https://www.pplindia.org/songs>.

10. Recording the said statement, without prejudice to the other preliminary objections raised by learned Counsel and reserving the right with the defendants to raise the said objections by means of separate applications, IA 21058/2023 is disposed of, binding the defendants in CS (COMM) 765/2023 by the statement made at the bar today to the effect that the defendants are not playing, nor would play,

any of the recordings forming part of the plaintiff's repertoire, without a license from the plaintiff, pending disposal of the present suit.

11. Insofar as the other suits are concerned, the defendants have not appeared despite advance service.

12. The facts stated in the plaint make out a *prima facie* case of copyright infringement.

13. In the circumstances, let the plaints be registered as a suit.

14. Issue summons in the suit.

15. Written statements, accompanied by affidavit of admission and denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned Counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission and denial of the documents filed by the defendants within 30 days thereof.

16. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission and denial of documents and marking of exhibits on 20 December 2023, whereafter the matters would be placed before the Court for case management hearing and further proceedings.

I.A. 21046/2023 (Order XXXIX Rules 1 and 2 of the CPC) in CS(COMM) 763/2023

I.A. 21052/2023 (Order XXXIX Rules 1 and 2 of the CPC) in CS(COMM) 764/2023

17. These are applications under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), seeking interlocutory injunctive reliefs.

18. The facts stated in the plaint clearly justify grant of *ex parte ad interim* injunction, inasmuch as, if *ex parte* orders are not passed, the defendants would be at liberty to play the plaintiff's copyrighted recordings without obtaining a license from the plaintiff. As the plaintiff is merely seeking an injunction against the defendants from playing recordings in which the plaintiff has copyright and which form part of its repertoire, and the present *ad interim* order would only extend to such recordings, no prejudice would ensue to the defendants, were *ex parte* interim orders to be passed to the said effect. The balance of convenience is clearly in favour of the plaintiff. At the same time, forbearance from granting such relief would enable the defendants to continue exploiting the plaintiff's copyright, which would result in irreparable prejudice to the plaintiff.

19. As such, a case for grant of *ex parte ad interim* injunction is made out.

20. Issue notice, returnable on 7 February 2024 before the Court.

21. Reply be filed within four weeks with advance copy to learned Counsel for the plaintiff, who may file rejoinder thereto, if any, within four weeks thereof.

22. Till the next date of hearing, the defendants as well as all other

acting on their behalf shall stand restrained from exploiting or using or in any manner, or transmitting the plaintiff's copyrighted works forming part of its repertoire available on its website <https://www.pplindia.org/songs> at any of its premises, without obtaining a prior license from the plaintiff.

23. Compliance with Order XXXIX Rule 3 of the CPC be effected within one week from today.

24. *Dasti.*

I.A. 21047/2023 (Section 12A of the Commercial Courts Act, 2015) in CS(COMM) 763/2023

I.A. 21053/2023 (Section 12A of the Commercial Courts Act, 2015) in CS(COMM) 764/2023

I.A. 21059/2023 (Section 12A of the Commercial Courts Act, 2015) in CS(COMM) 765/2023

25. In view of the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd*¹, exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

26. The applications stand allowed accordingly.

I.A. 21048/2023 (Order XI Rule 1(4) of the CPC) in CS(COMM) 763/2023

I.A. 21054/2023 (Order XI Rule 1(4) of the CPC) in CS(COMM) 764/2023

I.A. 21060/2023 (Order XI Rule 1(4) of the CPC) in CS(COMM)

¹2022 SCC OnLine Del 3529
CS(COMM) 763/2023 & cont. matters

765/2023

27. These applications seek permission to file additional documents. The plaintiff is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within four weeks from today.

28. The applications stand disposed of accordingly.

I.A. 21049/2023 (enlargement of time for filing c/fee) in CS(COMM) 763/2023

I.A. 21055/2023 (enlargement of time for filing c/fee) in CS(COMM) 764/2023

I.A. 21061/2023 (enlargement of time for filing c/fee) in CS(COMM) 765/2023

29. For the reasons stated in the applications, the plaintiff is permitted to file court fee within 30 days from today.

30. The applications stand disposed of.

I.A. 21050/2023 (Exemption) in CS(COMM) 763/2023

I.A. 21056/2023 (Exemption) in CS(COMM) 764/2023

I.A. 21062/2023 (Exemption) in CS(COMM) 765/2023

31. Subject to the plaintiff filing legible copies of any dim or illegible documents within 30 days, exemption is granted for the present.

32. The applications are disposed of.

I.A. 21051/2023 (permission to file CD and pen drive) in CS(COMM) 763/2023

I.A. 21057/2023 (permission to file CD and pen drive) in CS(COMM) 764/2023

33. For the reasons stated in the applications, the plaintiff is permitted to place on record the pen drive.

34. The applications stand disposed of.

Caveat 557/2023 in CS(COMM) 765/2023

35. Since caveator has entered appearance through learned Counsel, the Caveat stands discharged.

C.HARI SHANKAR, J

OCTOBER 20, 2023

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[Click here to check corrigendum, if any](#)