

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.9452 OF 2022

IN

COMMERCIAL IP SUIT NO.193 OF 2022

Indian Performing Right Society Limited ... Applicant / Plaintiff
Vs.
Rajasthan Patrika Pvt. Ltd. ... Respondent / Defendant

WITH

INTERIM APPLICATION NO.1213 OF 2022

IN

COMMERCIAL IP SUIT NO.84 OF 2022

Indian Performing Right Society Limited ... Applicant / Plaintiff
Vs.
Music Broadcast Limited ... Respondent / Defendant

Mr. Ravi Kadam, Senior Counsel a/w. Mr. Ashish Kamat, Mr. Rohan Kadam, Mr. Himanshu Bagai, Mr. Thomas George, Ms. Tanvi Sinha, Mr. Navankur Pathak, Ms. Neeti Nihal and Ms. Roma Liya i/b. Saikrishna and Associates, for the Applicant / Plaintiff in COMIP/193/2022.

Mr. Abhishek Malhotra a/w. Ms. Sapna Chaurasia and Mr. Darshit Jain i/b. TMT Law Practice, for the Defendant in COMIP/193/2022.

Mr. Janak Dwarkadas, Senior Counsel a/w. Mr. Himanshu Bagai, Mr. Thomas George, Ms. Tanvi Sinha, Mr. Navankur Pathak, Ms. Roma Liya, Ms. Neeti Nihal and Ms. Tamanna Tavares i/b. Saikrishna and Associates, for the Plaintiff / Applicant in COMIP/84/2022.

Mr. Virendra Tulzapurkar, Senior Counsel a/w. Mr. Hiren Kamod and Mr. Rahul P. Jain i/b. Alpha Chambers, for the Defendants in COMIP/84/2022.

CORAM : MANISH PITALE, J.

Reserved on : 6th FEBRUARY, 2023

Pronounced on : 28th APRIL, 2023

JUDGEMENT :

. The plaintiff - *Indian Performing Right Society Limited* (IPRS) has approached this Court seeking interim reliefs against the defendants

in these suits, primarily on the ground that amendments brought into effect from 21.06.2012 in the Copyright Act, 1957, have completely changed the legal framework concerning the rights of authors of original literary, dramatic, musical and artistic works. It is the case of the plaintiff – IPRS, that being a society registered under the provisions of the Copyright Act, it is espousing the cause of such authors of original works, who were earlier deprived of their rightful claims, but now they have become entitled to claim royalties on each occasion that their original works are utilized and in the facts of the present cases, on each occasion when a sound recording is communicated to the public by the defendants. It is relevant to mention here that the defendants are companies engaged in the business of operating FM Radio Broadcast Channels. The plaintiff - IPRS claims that the amendments brought into effect from 21.06.2012 in the Copyright Act have the effect of calling upon the Court to consider granting interim reliefs, without being influenced by a series of judgements and orders of the Supreme Court and various High Courts, concerning identical claims raised prior to the amendment of the Copyright Act.

2. The defendants, on the other hand, submit that the amendments are merely clarificatory in nature, re-enforcing the well settled position of law. It is specifically submitted that Sections 13 and 14 of the Copyright Act pertaining to ‘works in which copyright subsists’ and ‘meaning of copyright’ have not been amended in the year 2012, thereby indicating that amendments in other provisions would not grant any new substantive right to the authors of the original works, whose cause the plaintiff - IPRS claims to espouse.

3. In order to appreciate the rival contentions, it would be appropriate to refer to the facts in brief.

FACTS IN BRIEF

4. The plaintiff - IPRS was incorporated as a company in the year 1969, with the object of protecting and enforcing rights, interests and privileges of authors, composers and publishers, who were its members, particularly in relation to the literary and musical works. The defendant in Commercial IP Suit No.193 of 2022 i.e. *Rajasthan Patrika Private Limited* was incorporated as a private limited company in the year 1974. It is engaged in the business of operating FM Radio Broadcast Channels, including the channel '*Radio Tadka*'.

5. In the year 1996, the plaintiff - IPRS was granted a certificate of registration under Section 33 of the Copyright Act by the Registrar of Copyrights, authorizing it to carry on copyright business in literary and musical works. In the year 1999, the defendant in Commercial IP Suit No.84 of 2022 i.e. *Music Broadcast Private Limited* was incorporated as a company. It is engaged in the business of operating FM Radio Broadcast Channels, including the channel '*Radio City FM*'. The said defendant Music Broadcast Private Limited entered into a licence agreement with the plaintiff - IPRS on 11.06.2001 for utilization of the repertoire of literary and musical works of the plaintiff as a part of its FM radio broadcast from the radio station '*Radio City FM*'. Similarly, the defendant - *Rajasthan Patrika Private Limited* also entered into such agreement on 17.07.2006 with the plaintiff - IPRS for broadcasting from the radio station '*Radio Tadka*'. On 25.08.2010, the erstwhile Copyright Board of India set a compulsory licence fee to be paid by the radio broadcasters in a proceeding under Section 31(b) of the Copyright Act, to which the defendants herein were parties. The same expired on 30.09.2020.

6. At this stage, it would be relevant to refer to judgement of the

Supreme Court in the case of *Indian Performing Rights Society (IPRS) Vs. Eastern Indian Motion Pictures Association and others*, (1997) 2 SCC 820, wherein the Supreme Court considered the provisions of the Copyright Act as they existed at the relevant time. The Supreme Court interpreted the provisions of the said Act to hold that once the author of the original literary or musical work assigned the same to a producer of a cinematograph film, such author of original works could no longer claim any further right from such producer when the cinematograph film was communicated to the public. The said position of law has been reiterated in subsequent judgements of the Supreme Court and judgements / orders of this Court and other High Courts, despite amendments brought about in the Copyright Act in the year 1994.

7. On 23.11.2010, the Standing Committee of Parliament - HRD tabled Report No.227 in the Parliament, concerning Copyright (Amendment) Bill, 2010. The said report proposed amendments to Sections 17, 18, 19 and 33 of the Copyright Act. Eventually, amendments were brought about with effect from 21.06.2012, on the basis of the said report and the Amending Act was passed by the Parliament. It was Amendment Act 27 of 2012 and the statement of objects and reasons thereof gave details as to why the amendment was necessary.

8. The plaintiff - IPRS and the defendants herein have been engaged in legal proceedings over a period of time on the issue of the rights available to the authors of the original works, whenever the sound recordings, wherein such original works have been utilized, are communicated to the public. On 25.07.2011, a learned Single Judge of this Court decreed **Suit No.2401 of 2006** (*Music Broadcast Pvt. Ltd. Vs. IPRS*), holding that the authors of the original works or the underlying literary and musical works embodied in sound recordings had no right to

interfere with the rights of owners of such sound recordings to communicate the same to the public, including by broadcast through their radio stations. It is relevant that the defendant - Music Broadcast Limited in Commercial IP Suit Limited 84 of 2022, was the plaintiff therein and IPRS was the defendant. Aggrieved by the said judgement and decree, IPRS filed appeal before the Division Bench of this Court, wherein operation of the judgement was stayed but the decree was not stayed.

9. As noted hereinabove, the Copyright (Amendment) Act 2012 (27 of 2012) came into effect from 21.06.2012, whereby significant amendments were made to the Copyright Act.

10. On 25.06.2015, the defendant - Music Broadcast Limited in Commercial IP Suit No.84 of 2022, was converted into a public limited company. On 20.09.2016, the Supreme Court passed order in the case of *International Confederation of Societies of Authors and Composers (ICSAC) Vs. Aditya Pandey*, (2017) 11 SCC 37, upholding the orders passed by a learned Single Judge and Division Bench of the Delhi High Court, on the same lines as the judgement and decree passed by the learned Single Judge of this Court in the case of **Music Broadcast Pvt. Ltd. Vs. IPRS** (*supra*). But, the Supreme Court did refer to the changes brought about in the Copyright Act with effect from 21.06.2012, as per the Copyright (Amendment) Act, 2012. On 08.06.2018, the plaintiff - IPRS was granted re-registration by Registrar of Copyrights. On 15.09.2020, the plaintiff - IPRS became aware about various applications filed under Section 31D of the Copyright Act by number of radio broadcasters before the Intellectual Property Appellate Board (IPAB). On 17.09.2020, the plaintiff - IPRS filed intervention application before the IPAB to intervene in the said proceedings, claiming to be an interested party. On 18.09.2020, the plaintiff - IPRS

was impleaded as respondent before the IPAB in the said proceedings and immediately thereafter, the plaintiff filed its submissions in the said proceedings. On 31.12.2020, the IPAB passed an order fixing rates of royalties in such *in rem* proceedings for sound recordings as well as literary and musical works, thereby acknowledging the change in law, post amendment of the Copyright Act. The defendants filed appeals against the said order of the IPAB dated 31.12.2020, to the limited extent that the IPAB could not have determined separate rates of royalty to be paid by the radio broadcasters for literary and musical works, claiming that no such separate royalty was payable for utilization of such works in sound recordings.

11. In the meanwhile, a learned Single Judge of the Delhi High Court dismissed two suits filed by the plaintiff - IPRS, holding that the Copyright (Amendment) Act, 2012, had not brought about any change in law and that there was no requirement for a separate licence to be obtained from the plaintiff - IPRS for utilization of the literary and musical works incorporated in sound recordings. The said judgement and order has been challenged by way of appeals before the Division Bench of the Delhi High Court, which are pending. Although on 14.01.2021, a Division Bench of the Delhi High Court directed that the said judgement and order of the learned Single Judge dated 04.01.2021, shall not be relied upon and used as a precedent, subsequently on 25.01.2021, the said order of the Division Bench of the Delhi High Court was recalled on account of conflict of interest. The appeals are pending before the Division Bench.

12. On 04.04.2021, the Government of India notified the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021 leading to dissolution of the IPAB. On 07.07.2021, the Delhi High Court introduced Intellectual Property Division (IPD) to carry out the

functions of the IPAB, including fixing / revising of royalty rates under Section 31D of the Copyright Act. On 06.09.2021, the defendants filed application under Section 31D of the said Act before the IPD seeking revision of the statutory licence rates and also sought an order of status-quo. On 27.09.2021, a learned Single Judge of the IPD Bench of the Delhi High Court passed an interim order of *status quo*, but clarified that the plaintiff - IPRS would be within its rights to avail remedies available in law if the defendants were non-compliant with the order passed by the IPAB.

13. In this backdrop, the plaintiff - IPRS requisitioned the services of an entity called 'AirCheck' to procure data of the songs played by the radio stations of the defendants. Data revealed a large number of music playouts by radio stations of the defendants, allegedly belonging to the repertoire of the plaintiff - IPRS, for the month of September 2021. Representatives of the plaintiff - IPRS also recorded songs broadcasted by the radio stations of the defendants, which also indicated that the defendants were broadcasting songs belonging to the repertoire of the plaintiff - IPRS and that this was allegedly in contravention of Section 31D-(5) of the Act, as claimed by the plaintiff - IPRS. Thereafter, on 06.10.2021, the learned Single Judge of the IPD Bench of the Delhi High Court directed issuance of two public notices for underlying literary and musical works and for sound recordings.

14. It is in this backdrop that the present suits came to be filed in March and December, 2022. The plaintiff - IPRS filed interim applications in the suits praying for interim reliefs against the defendants. The defendants filed their reply affidavits and thereupon the pleadings were completed. The applications were taken up for hearing.

SUBMISSIONS

15. Mr. Ravi Kadam, learned senior counsel appearing for the plaintiff - IPRS in Commercial IP Suit No.193 of 2022 and Mr. Janak Dwarkadas, learned senior counsel appearing for the plaintiff - IPRS in Commercial IP Suit No.84 of 2022, made elaborate submissions to impress upon this Court that the scheme of the Copyright Act, post its amendment in the year 2012 with effect from 21.06.2012, had brought about a sea-change in the scheme of the Act, justifying the prayers made in the suits and the applications for interim reliefs. It was submitted that the position of law laid down by the Supreme Court in its judgement delivered in the year 1977 in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) and followed subsequently by the Supreme Court and various High Courts cannot come in the way of the plaintiff - IPRS, pressing for interim reliefs in the present applications. The learned senior counsel referred to various provisions of the Copyright Act and a number of judgements to support the prayers made in the interim applications. The submissions made on behalf of the plaintiff - IPRS were as follows: -

- (A) The learned senior counsel invited attention of this Court to the scheme of the Copyright Act, particularly the amendments brought about with effect from 21.06.2012. Much emphasis was placed on amendments to Sections 17, 18 and 19 of the Copyright Act. The learned senior counsel submitted that the Statement of Objects and Reasons of the Copyright (Amendment) Act, 2012 incorporated detailed reasons as to why such amendments had become necessary. Clauses (viii), (ix), (x), (xiv), (xvi) and (xvii) of the Statement of Objects and Reasons were emphasized upon and it was submitted that the substantial amendments brought about in the Copyright Act were with the intention to protect the

rights of the authors of the original literary and musical works i.e. the underlying works. The amendments had the effect of reversing the prevailing position of law under the unamended Copyright Act, as interpreted by the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) and numerous subsequent judgements.

(B) Mr. Kadam, learned senior counsel for the plaintiff - IPRS in Commercial IP Suit No.193 of 2022 went to the extent of submitting that even under the unamended Copyright Act, such exclusive rights in the underlying works of the authors were protected and that the Supreme Court had erroneously interpreted the provisions of the unamended Copyright Act to hold against authors of such underlying works in the said judgement in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*). But, the said contention is recorded, only to be rejected, for the reason that the interpretation placed on the unamended provisions of the Copyright Act by the Supreme Court is obviously binding on this Court.

(C) It was submitted on behalf of the plaintiff - IPRS that being a statutorily regulated copyright society set up for the welfare and collective interest of the authors of such underlying literary and musical works, it was entitled to espouse their cause in the present proceedings.

(D) Attention of this Court was invited to Sections 13 and 14 of the Copyright Act, which pertain to works in which the copyright subsists and meaning of copyright. It was submitted that copyright does subsist under Section 13(1) in original literary, dramatic, musical and artistic works; in cinematograph films and in sound

recordings. Similarly, copyright under Section 14 of the Copyright Act refers to the exclusive right in such literary, dramatic and artistic works; in cinematograph films and in sound recordings. But, it was emphasized that such subsistence of copyright and exclusive rights therein was subject to the provisions of the Copyright Act. It was submitted that the said limitation i.e. 'subject to the provisions of this Act' in the light of amendments made to Sections 17, 18 and 19 of the Copyright Act, assumed significance, indicating that the exclusive copyright in a cinematograph film and a sound recording was circumscribed by *proviso* added to Section 17, the third and fourth *provisos* added to Section 18 and sub-Sections (9) and (10) added in Section 19 of the Copyright Act, by way of amendment. According to the learned senior counsel appearing for the plaintiff - IPRS, such amendments have taken away the basis of the position of law laid down by the Supreme Court in its judgement of the year 1977 i.e. **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) and subsequent judgements.

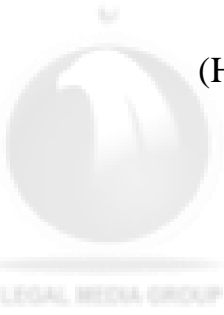
- (E) After referring to paragraphs 15, 16 and 17 of the judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*), it was submitted that the basis of interpretation placed on Sections 13 and 14 of the Copyright Act stood nullified by the aforementioned *provisos* added to Sections 17 and 18 as also sub-Sections (9) and (10) added in Section 19 of the Copyright Act. It was emphasized that the right of the author of such original works recognized under Section 13(1)(a) of the Copyright Act now stood unaffected by *provisos* (b) and (c) to Section 17, as per the *proviso* added to Section 17 of the Copyright Act by way of amendment. Emphasis

was also placed on the third and fourth *provisos* to Section 18 of the Copyright Act to claim that on each occasion that the original works recognized and protected under Section 13(1)(a) of the Copyright Act, were utilized while communicating a sound recording to the public, the right of authors of such original works to collect royalties stood assured. In this context, reliance was also placed on sub-Sections (9) and (10) added in Section 19 of the Copyright Act, to contend that the 'exclusive rights' claimed by the defendants under Section 14(e)(iii) of communicating sound recording to the public now stands circumscribed by the *provisos* added to Sections 17 and 18, as also sub-Sections (9) and (10) added in Section 19 of the Copyright Act.

(F) On a conjoint reading of Sections 13, 14, 17, 18 and 19 of the Copyright Act, it was emphatically claimed on behalf of the plaintiff - IPRS that post amendment, the scheme of the Copyright Act had undergone significant changes, justifying the prayers made in the suits and the interim reliefs sought in the present applications.

(G) It was submitted that the exclusive nature of rights of the producers of the cinematograph films and / or sound recordings recognized by the Supreme Court in the said judgement in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) and followed subsequently by the various Courts, was based on interpreting Sections 13 and 14 in the light of the then prevailing Sections 17, 18 and 19 of the Copyright Act. It was submitted that the statutory basis for such interpretation was taken away by the amendments introduced with effect from 21.06.2012 and that the said judgement of the Supreme Court stood legislatively overruled. It was submitted that when the basis

for such erstwhile recognized position of law was taken away, the said position of law being recognized by the Supreme Court and subsequently by various High Courts could be of no assistance to the defendants. It was submitted that in various proceedings initiated by and against the plaintiff - IPRS on earlier occasions, findings were rendered against the IPRS on the basis of the position of law laid down and reiterated by the Supreme Court, based on the unamended provisions of the Copyright Act. In view of the radical changes introduced in the Copyright Act by the said amendment, this Court needs to take a fresh look at the scheme, as it stands today, to grant interim reliefs in favour of the plaintiff - IPRS.

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- (H) The learned senior counsel appearing for the plaintiff - IPRS also referred to various Rules of the Copyright Rules, 2013, to contend that a detailed scheme had been incorporated for determination of tariff as regards the royalties payable to authors of original underlying works recognized in Section 13(1)(a) of the Copyright Act. Specific reference was made to Rule 56 of the Copyright Rules pertaining to tariff scheme, Rule 57 providing for an appeal by an aggrieved party against determination of such tariff scheme and Rule 58 pertaining to distribution scheme, which a copyright society like the plaintiff - IPRS was required to frame for distribution of royalties to authors of such original works. It was submitted that the Copyright Act read with the said Rules, post amendment, changed the entire scenario pertaining to the competing claims of the stakeholders having specific rights under the statutory provisions.
- (I) The learned senior counsel appearing for the plaintiff - IPRS referred to the report of the Standing Committee of Parliament,

concerning the Bill introduced for bringing about such radical amendments in the Copyright Act. Reference was also made to opinions expressed by achievers in such creative fields, including Mr. Javed Akhtar, the well-known lyricist, dialogue and story writer of the Indian film industry. It was emphasized that the Standing Committee considered the effect of the interpretation of provisions of the unamended Copyright Act in the judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*), particularly on the authors of original literary and musical works, who were found to have received a raw deal. It was emphasized that the Standing Committee made specific reference to the opinion of *Justice Krishna Iyer* (as he then was) in the said judgement, written as a footnote, wherein it was recorded that policy change was required at the behest of the Legislature to help such authors of original works. It was submitted that such authors of original works, including lyricists and music composers suffered due to unequal bargaining powers with the producers of the cinematograph films and / or sound recordings. This necessitated discussion, debate and consideration of changes to be brought about in the Copyright Act, so as to protect the rights of such authors of original works. Apart from referring to the debates leading to enactment of the Copyright (Amendment) Act, 2012, emphasis was again placed on Statement of Objects and Reasons of the said amending Act to bring home the point that this Court ought to consider afresh the contentions raised on behalf of such authors of original works, in the light of the amended Copyright Act.

(J) It was submitted that even the Supreme Court in its judgement in

the case of **International Confederation of Societies of Authors and Composers (ICSAC) Vs. Aditya Pandey** (*supra*) recognized that the amendments brought about in the year 2012 had changed the law. But, since the facts of the said case pertained to the unamended Copyright Act, the orders passed by the learned Single Judge and Division Bench of the Delhi High Court were sustained. It was brought to the notice of this Court that a learned Single Judge of the Delhi High Court in judgement and order dated **04.01.2021**, passed in the case of *IPRS Vs. Entertainment Network (India) Limited*, **CS (O.S.) No.666 of 2006**, did comment about the effect of the amendments to the Copyright Act brought about in the year 2012. It was submitted that the suit filed by the plaintiff - IPRS pertained to the year 2006 and therefore, there was no occasion to comment upon the position of law, post amendment, yet the learned Single Judge of the Delhi High Court proceeded to do so. While commenting upon the effect of the amendment of the year 2012, the learned Single Judge of the Delhi High Court, according to the plaintiff - IPRS, erred in failing to appreciate the true scope and purport of the amendment and the significant change in the legal position brought about by such amendment. The learned senior counsel appearing for the plaintiff - IPRS made an endeavor to demonstrate how the approach of the learned Single Judge of the Delhi High Court in the said case was erroneous. It was submitted that the said judgement and order is challenged in appeals before the Division Bench of the Delhi High Court, which are pending. It was submitted that this Court could therefore, consider the contentions raised on behalf of the plaintiff - IPRS, particularly in the light of the amendments to the Copyright Act.

- (K) Thereafter, the learned senior counsel for the plaintiff - IPRS referred to each judgement, starting from the judgement of the Supreme Court of the year 1977 in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) to demonstrate how post-amendment, the said judgements could no longer apply.
- (L) In the light of the submissions made on behalf of the defendants in these suits and the learned senior counsel appearing for the plaintiff in a suit filed by *Yash Raj Films Private Limited* (YRF), who was permitted to make submissions on pure questions of Law, the learned senior counsel appearing for the plaintiff - IPRS submitted that the right to collect royalties specified in the third and fourth *provisos* to Section 18, added by way of the 2012 amendment, was nothing but a form of copyright and that therefore, it could not be contended that the nature of the right was distinct from a copyright as discernible from Sections 13 and 14 of the Copyright Act. In that context, the learned senior counsel for the plaintiff - IPRS also referred to Section 16 of the Copyright Act.
- (M) It was further submitted that the defendants were not justified in contending that there was no change in law, on the ground that Sections 13 and 14 had not been amended, simply for the reason that both the Sections contained the words 'subject to the provisions of this Act', thereby indicating that the exclusive rights claimed by the defendants were circumscribed by the amended Sections 17, 18 and 19 of the Copyright Act and that such restrictions could not be related only to Section 52 of the Copyright Act, which indicates as to what acts would not amount to infringement of copyright.

(N) It was further submitted that *provisos* introduced to a substantive provision of a statute could also give rise to a substantive right in favour of a party. In this connection, the learned senior counsel for the plaintiff - IPRS relied upon the Constitution Bench judgement of the Supreme Court in the case of *Dattatraya Govind Mahajan and others Vs. State of Maharashtra and another*, (1977) 2 SCC 548, which in turn relied upon judgement of the Supreme Court in the case of *Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai*, AIR 1966 SC 459. On this basis, it was submitted that the amendments to the Copyright Act were made only to the extent necessary, in order to achieve the object for which such amendments were introduced. The learned senior counsel, therefore, submitted that this Court may allow the interim applications so that the defendants while communicating sound recordings to the public from their radio stations pay appropriate royalties to the authors of the underlying original works like lyrics and music compositions, in terms of the statutory requirement manifested in the amended Sections 17, 18 and 19 of the Copyright Act.

16. Dr. Virendra Tulzapurkar, learned senior counsel and Mr. Abhishek Malhotra, learned counsel appearing for the defendants in these proceedings refuted the claims made on behalf of the plaintiff - IPRS. It was submitted that undoubtedly, changes have been made to the Copyright Act in the year 2012, but essentially the amendments are clarificatory in nature. It was submitted that even if it was to be said that the amendments were brought about in order to give further rights to authors of original works, whose cause the plaintiff - IPRS claims to espouse, the amendments had obviously fallen short of such object. It was emphasized that the prevailing position of law pertaining to the

exclusive rights of parties like the defendants continued to operate, notwithstanding the said amendments. In support of the said position, the following submissions were made: -

(A) Sections 13 and 14 of the Copyright Act are the main provisions that define the meaning of copyright and as to in which works copyright subsists. It was submitted that the said two Sections continue to be the same even after amendments in the Copyright Act in the year 2012. On this basis, it was submitted that, so long as these two main provisions were not amended to incorporate and recognize a special or additional right, as claimed by the plaintiff – IPRS, in the authors of original works, the position of law recognized and clarified by the Supreme Court in its judgement of the year 1977 in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) continues to apply.

(B) In that light, it was submitted that adding *provisos* to Sections 17 and 18 and sub-Sections (9) and (10) of Section 19 of the Copyright Act only further clarified the position of law recognized in the said judgement of the Supreme Court, followed subsequently in numerous judgements. According to the learned counsel appearing for the defendants, the right of the said defendants under Section 14(e)(iii) to communicate the sound recording to the public remained exclusive. This was for the reason that, as per settled law, under Section 13(1)(c) of the Copyright Act, a separate, distinct and exclusive copyright in the sound recording subsists. It was submitted that even though Section 13(4) of the Copyright Act does recognize that the copyright in the sound recording shall not affect the separate copyright in the original works that form part of the sound recording, such separate copyright and the right emanating therefrom can be exercised in

forms other than when such works are communicated as part of a sound recording to the public under Section 14(e)(iii) of the Copyright Act.

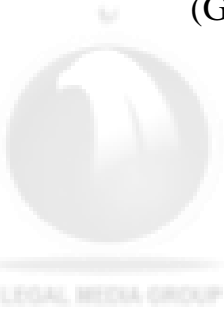
(C) Such basic and fundamental position of law, according to the defendants, has remained unchanged despite amendments to the Copyright Act in the year 2012.

(D) It was vehemently submitted that the substantive right accruing in favour of the authors of the original works as per Section 13(1)(a) read with Section 14(a) of the Copyright Act, cannot be read into the *provisos* introduced to Sections 17 and 18, as also sub-Sections (9) and (10) added in Section 19 of the Copyright Act, because such *provisos* cannot give birth to a substantive right. Sections 13 and 14 ought to have been amended to recognize / grant additional right to the authors of such original works.

(E) It was submitted that in the absence of amendments to Sections 13 and 14 of the Copyright Act, the *provisos* added to Sections 17 and 18 merely clarified the already existing position of law that such authors of original works could exercise their right without encroaching upon the exclusive right available to parties like the defendants herein, of communicating the sound recordings to the public. In this light, it was submitted that the emphasis placed on the words 'subject to the provisions of this Act' on behalf of the plaintiff - IPRS was misplaced because such words were always there in Sections 13 and 14 of the Copyright Act and they are necessarily relatable to substantive provisions of the Copyright Act, particularly Section 52 thereof, which refers to certain acts, not to be treated as infringement of copyrights.

(F) The learned counsel for the defendants also emphasized upon

delay and acquiescence on the part of the plaintiff - IPRS, contending that while the amendments were brought into effect from 21.06.2012, the present suits were filed much later. It was further submitted on behalf of the defendant - Music Broadcast Limited in Commercial IP Suit No.84 of 2022, that the plaintiff - IPRS cannot claim separate rights for such underlying original works, for the reason that it has suffered a decree in the suit filed by the said defendant in the case of *Music Broadcast Private Limited Vs. IPRS*, **Suit No.2401 of 2006** and that such decree has not been stayed by the Division Bench of this Court in the pending appeal.



(G) The learned counsel for the defendants then referred to the orders passed by the Delhi High Court and this Court, wherein findings were rendered against the plaintiff - IPRS. Particular emphasis was placed on judgement and order dated 04.01.2021, passed by the learned Single Judge of the Delhi High Court in **IPRS Vs. Entertainment Network (India) Limited** (*supra*), wherein the amendments in the Copyright Act were taken into consideration and it was emphatically held that there was no change in law.

(H) The learned counsel for the defendants further submitted that the balance of convenience was clearly in favour of the defendants, for the reason that the plaintiff - IPRS had waited for a long period of time to initiate the present proceedings while the defendants continued to engage in the business of communicating sound recordings to the public.

(I) It was further submitted that if the interpretation placed by the plaintiff - IPRS on the provisions of the Copyright Act post amendment, was to be accepted, it would create a conflict between

Section 14(a), 14(d) and 14(e) and also make Section 14(d) and 14(e) subservient to Section 14(a), which could not have been the intention of the Amending Act.

- (J) It was submitted that the issues sought to be raised by the plaintiff - IPRS are pending in appeals before the Division Bench of the Delhi High Court and even the Supreme Court in the case of *Special Leave Petition (Civil) Nos.3764-3733 of 2022* indicated that no opinion was being expressed, lest it impacts the appeal proceedings before the Division Bench of the Delhi High Court. On this basis, it was submitted that this Court must also hold its hands in the present proceedings during pendency of the appeals before the Division Bench of the Delhi High Court.

17. Mr. Khambata, learned senior counsel sought to assist this Court in the present proceedings by contending that any view taken by this Court in the present proceedings would have an impact on the plaintiff - *Yash Raj Films Private Limited (YRF)* against the IPRS in Commercial IP Suit No.21 of 2021. Upon this Court making it clear that the said proceeding concerning YRF would not be taken up for consideration with the present proceedings, Mr. Khambata, learned senior counsel submitted that he may be heard only on pure questions of law, in order to assist this Court. He submitted that the right to collect royalties mentioned in the *provisos* added to Section 18 of the Copyright Act could not be recognized as a copyright. It was another statutory right made available to the authors of such original works. It was claimed that the right to collect such royalties did not arise out of ownership of the copyright. In this regard, a reference was made to *proviso* to Section 33(3-A) of the Copyright Act to claim that in the Copyright Act itself, right to collect royalty other than a right emanating from ownership of

copyright was duly recognized. By emphasizing upon the same, it was submitted that the exclusive right under Section 14(e)(iii) of the Copyright Act remained absolutely unaffected. The learned senior counsel also relied upon judgement of the learned Single Judge of the Delhi High Court in the case of **IPRS Vs. Entertainment Network (India) Limited** (*supra*) to contend that the amendments had not brought about any change in the position of law.

CONSIDERATION & ANALYSIS

18. Considering the rival submissions, the real crux of the present matter is, as to whether the plaintiff - IPRS is justified in claiming interim reliefs on the basis that a strong *prima facie* case is made out due to change in law, as per amendments brought about in the Copyright Act with effect from 21.06.2012, as opposed to the stand taken by the defendants that the position of law continues to be the same in respect of the extent to which authors of original literary and musical works, can exercise their rights on every occasion that their underlying works are communicated to the public. Before addressing the aspect of amendments to the Copyright Act, brought into effect from the year 2012, and in that context, analyzing whether change has been affected in the established position of law, it would be necessary to refer to the position of law recognized and reiterated in various judgements of the Supreme Court and High Courts. It would not be necessary to refer to each one of such judgements, but to appreciate the rival contentions in the correct perspective, reference would have to be made to a few.

19. The sheet-anchor of the contentions raised on behalf of the defendants is the judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*), wherein similar cause espoused by the plaintiff – IPRS, regarding

underlying rights of authors of original works in the context of cinematograph films, was considered. Upon a detailed analysis of the relevant portions of the Copyright Act, including the definition Section, as also Sections 13, 14 and 17 thereof, the Supreme Court concluded that once such underlying original works became part of a cinematograph film and the producer of such cinematograph film enjoyed exclusive right as regards the said work, the authors of such underlying works had lost all rights by virtue of Section 17 of the Copyright Act, notwithstanding Section 13(4) thereof. Much emphasis was placed on *provisos* (b) and (c) to Section 17 of the Copyright Act, which pertain to first owner of copyright. The relevant provisions of the Copyright Act as they existed at that point in time were considered in detail and it was held as follows: -

“15. The interpretation clause (f) of Section 2 reproduced above, which is not exhaustive, leaves no room for doubt when read in conjunction with Section 14(1)(c)(iii) that the term "cinematograph film" includes a sound track associated with the film. In the light of these provisions, it cannot be disputed that a "cinematograph film" is to be taken to include the sounds embodied in a sound track which is associated with the film. Section 13 recognises 'cinematograph film' as a distinct and separate class of 'work' and declares that copyright shall subsist therein throughout India. Section 14 which enumerates the rights that subsist in various classes of works mentioned in Section 13 provides that copyright in case of a literary or musical work means inter alia (a) the right to perform or cause the performance of the work in public and (b) to make or authorise the making of a cinematograph film or a record in respect of the work. It also provides that copyright in case of cinematograph film means among other rights, the right of exhibiting or causing the exhibition in public of the cinematograph film i.e. of causing the film in so far as it consists of visual images to be seen in public and in so far as it consists of sounds to be heard in public. Section 13(4) on which Mr. Ashok Sen has leaned heavily in support of his contentions lays down that the copyright in a cinematograph film or a record 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 record is made. Though a

conflict may at first sight seem to exist between Section 13(4) and Section 14(1) (a) (iii) on the one hand and Section 14(1) (c) (ii) on the other, a close scrutiny and a harmonious and rational instead of a mechanical construction of the said provisions cannot but lead to the irresistible conclusion that once the author of a lyric or a musical work parts with a portion of his copyright by authorising a film producer to make a cinematograph film in respect of his work and thereby to have his work incorporated or recorded on the sound track of a cinematograph film, the latter acquires by virtue of Section 14(1)(c) of the Act on completion of the cinematograph film a copyright which gives him the exclusive right inter alia of performing the work in public i.e. to cause the film in so far as it consists of visual images to be seen in public and in so far as it consists of the acoustic portion including a lyric or a musical work to be heard in public without securing any further permission of the author (composer) of the lyric or a musical work for the performance of the work in public. In other words, a distinct copyright in the aforesaid circumstances comes to vest in the cinematograph film as a whole which in the words of British Copyright Committee set up in 1951 relates both to copying the film and to its performance in public. Thus if an author (composer) of a lyric or musical work authorises a cinematograph film producer to make a cinematograph film of his composition by recording it on the sound track of a cinematograph film, he cannot complain of the infringement of his copyright if the author (owner) of the cinematograph film causes the lyric or musical work recorded on the sound track of the film to be heard in public and nothing contained in Section 13(4) of the Act on which Mr. Ashok Sen has strongly relied can operate to affect the rights acquired by the author (owner) of the film by virtue of Section 14(1)(c) of the Act. The composer of a lyric or a musical work, however, retains the right of performing it in public for profit otherwise than as a part of the cinematograph film and he cannot be restrained from doing so. In other words, the author (composer) of lyric or musical work who has authorised a cinematograph film producer to make a cinematograph film of his work and has thereby permitted him to appropriate his work by incorporating or recording it on the sound track of a cinematograph film cannot restrain the author (owner) of the film from causing the acoustic portion of the film to be performed or projected or screened in public for profit or from making any record embodying the recording in any part of the sound track associated with the film by utilising such sound track or from communicating or authorising the communication of the film

by radio diffusion, as Section 14(1)(c) of the Act expressly permits the owner of the copyright of the cinematograph film to do all these things. In such cases, the author (owner) of the cinematograph film cannot be said to wrongfully appropriate anything which belongs to the composer of the lyric or musical work. Any other construction would not only render the express provisions of clauses (f), (m), (y) of Section 2, Section 13(1)(b) and Section 14(1)(c) of the Act otiose but would also defeat the intention of the Legislature, which in view of the growing importance of the cinematograph film as a powerful media of expression, and the highly complex technical and scientific process and heavy capital outlay involved in its production, has sought to recognise it as a separate entity and to treat a record embodying the recording in any part of the sound track associated with the film by utilising such sound track as something distinct from a record as ordinarily understood.

16. On a conspectus of the scheme of the Act as disclosed in the provisions reproduced above particularly clauses (d)(v), (f), (m), (v) and (y) of Section 2, Sections 13(1) and 14(1)(c), provisos (b) and (c) to Section 17 and Sections 22 and 26 of the Act, it is, therefore, abundantly clear that a protectable copyright (comprising a bundle of exclusive rights mentioned in Section 14(1)(c) of the Act) comes to vest in a cinematograph film on its completion which is said to take place when the visual portion and audible portion are synchronized.

17. This takes us to the core of the question namely, whether the producer of a cinematograph film can defeat the right of the composer of music . . . or lyricist by engaging him. The key to the solution of this question lies in provisos (b) and (c) to Section 17 of the Act reproduced above which put the matter beyond doubt. According to the first of these provisos viz. proviso (b) when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film, or composing music or lyric therefor, i.e. the sounds for incorporation or absorption in the sound track associated with the film, which as already indicated, are included in a cinematograph film, he 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. The same result follows according to aforesaid proviso (c) if the composer of music or lyric is employed under a contract of

service or apprenticeship to compose the work. It is, therefore, crystal clear that the rights of a music . . . composer or lyricist can be defeated by the producer of a cinematograph film in the manner laid down in provisos (b) and (c) of Section 17 of the Act. We are fortified in this view by the decision in *Wallerstein v. Herbert*, relied upon by Mr. Sachin Chaudhary where it was held that the music composed for reward by the plaintiff in pursuance of his engagement to give effect to certain situations in the drama entitled "Lady Andley's Secret", which was to be put on the stage was not an independent composition but was merely an accessory to and a part and parcel of the drama and the plaintiff did not have any right in the music."

20. Although the concurring opinion of *Krishna Iyer, J.* agreed with the conclusion in the leading opinion of *Jaswant Singh, J.* in the said judgement, there were pointers in the opinion of *Krishna Iyer, J.* styled as a footnote, to the effect that the lawmakers and Parliament were required to take necessary steps to address the infirmities in the law as it existed, lamenting the treatment meted out to creative individuals, who contributed immensely to the final product i.e. the cinematograph film. The relevant portion of the opinion of *Krishna Iyer, J.* reads as follows: -

"24. A somewhat un-Indian feature we noticed in the Indian copyright Act falls to be mentioned. Of course, when our law is intellectual borrowing from British reports as, admittedly it is, such exoticism is possible. 'Musical work', as defined in Section 2(p), reads:

(p) musical work means any combination of melody and harmony or either of them printed, reduced to writing or otherwise graphically produced or reproduced.

Therefore, copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is the melody or harmony reduced to print, writing or graphic form. The Indian music lovers throng to listen and be enthralled or enchanted by the *nada brahma*, the sweet concord of sounds, the raga, the *bhava*, the *laya* and the sublime or exciting singing. Printed music is not the glamour or glory of it, by and large, although the content of the poem or the lyric or the song does have appeal. Strangely enough, 'author', as defined in Section 2(d), in relation to a musical work, is only the composer and Section 16 confines 'copyright'

to those works which are recognised by the Act. This means that the composer alone has copyright in a musical work. The singer has none. This disentitlement of the musician or group of musical artists to copyright is un-Indian, because the major attraction which lends monetary value to a musical performance is not the music maker, so much as the musician. Perhaps, both deserve to be recognised by the copyright law. I make this observation only because art in one sense, depends on the ethos and the aesthetic best of a people; and while universal protection of intellectual and aesthetic property of creators of 'works' is an international obligation, each country in its law must protect such rights wherever originality is contributed. So viewed, apart from the music composer, the singer must be conferred a right. Of course, law-making is the province of Parliament but the Court must communicate to the lawmaker such infirmities as exist in the law extant.”

21. The said opinion of *Krishna Iyer, J.* clearly indicated that there was scope for making appropriate changes in the law, so as to address certain infirmities indicated in the said opinion. It was obviously in the province of the Parliament and lawmakers to take necessary steps in the matter. Subsequent to the said judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) rendered in the year 1977, amendments were made to the Copyright Act in the year 1983, 1984 and 1994, but the concern expressed in the opinion of Krishna Iyer, J. in the said judgement was not really addressed. Therefore, judgements rendered by the Supreme Court and various High Courts in the context of the Copyright Act, essentially relied upon the position of law indicated in the above-quoted portion of the judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*).

22. This is evident from judgements / orders of this Court and the Delhi High Court referred to and relied upon by the learned counsel appearing for the defendants. In the case of **Music Broadcast Pvt. Ltd. Vs. IPRS** (*supra*), a learned Single Judge of this Court followed the

dictum quoted hereinabove and upon further analysis of the provisions of the Copyright Act pursuant to amendments brought about before the year 2012, held that the plaintiff therein (one of the defendants in the present proceedings) was entitled to a decree against the IPRS. This Court referred to Sections 13 and 14 of the Copyright Act and in the light of the position of law clarified by the Supreme Court, held that the owner of a sound recording has the exclusive right to communicate the same to the public under Section 14(e)(iii) of the Copyright Act and authors of original underlying musical and literary works could not claim any right therein, for the reason that the sound recording, as a work, was itself a distinct copyright recognized under Section 13(1)(c), after the amendment brought about with effect from 10.05.1995. As noted hereinabove, the Division Bench of this Court did stay the judgement, but not the decree granted against IPRS in the said case.

23. Similarly, a learned Single Judge of the Delhi High Court held against the IPRS, which was the plaintiff therein (*IPRS Vs. Aditya Pandey and another*). After a detailed discussion on the provisions of the Copyright Act, it was held that IPRS was not entitled to insist upon the defendants therein securing licence for communicating sound recordings to the public, for the reason that they had already obtained licence from the original owner of such sound recordings. It was held in the said order that it would be unjustified to say that when the sound recording is communicated to the public or it is broadcast, the musical and literary work is also communicated to the public through sound recording. On this basis, it was held that once a licence is obtained by a party from the owner in respect of a sound recording for communicating it to the public, including by broadcasting, a separate authorization or licence is not necessary from the copyright owner or author of the underlying original musical or literary work.

24. The said order of the learned Single Judge of the Delhi High Court was confirmed by the Division Bench by dismissing the appeals. These orders were then subjected to challenge before the Supreme Court in the case of **International Confederation of Societies of Authors and Composers (ICSAC) Vs. Aditya Pandey** (*supra*). By the time the matter reached the Supreme Court, the said amendments were brought about in the year 2012 in the Copyright Act. But, since the controversy before the Supreme Court in the said cases pertained to a period prior to such amendment in the year 2012, the Supreme Court considered the rival contentions on the basis of the unamended Copyright Act and once again reiterated the position on law as was laid down in the judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*). Yet, the Supreme Court in the aforesaid judgement in the case of **International Confederation of Societies of Authors and Composers (ICSAC) Vs. Aditya Pandey** (*supra*) did observe in paragraph 22 as follows: -

“22. In view of the above settled principles of law, and for the reasons discussed by us, we are unable to find any error in the impugned order passed by the High Court in a suit filed in 2006. However, we would like to clarify, that with effect from 21.06.2012, 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 or/and consideration payable for utilization of such work in any form by the respondent-plaintiff.”

25. The aforesaid clarification is of significance while considering the rival contentions in the present case.

26. This Court also needs to consider the order passed by a learned Single Judge of the Delhi High Court in the case of **IPRS Vs. Entertainment Network (India) Limited** (*supra*). In the said case, the

disputes arose in the year 2006 and obviously the amendments brought about in the year 2012 in the Copyright Act were not of relevance. But since arguments were addressed on behalf of the rival parties, particularly IPRS in respect of the effect of the 2012 amendment to the Copyright Act, the learned Single Judge of the Delhi High Court in the said case thought it fit to refer to such contentions. Strictly speaking, since the controversy in the said case had nothing to do with the Copyright Act post the 2012 amendment, the Delhi High Court in the said case was not required to consider such arguments or to render findings thereon. Nonetheless, since the Delhi High Court did undertake the said exercise and since the learned counsel for the defendants have heavily relied upon observations made therein, it would be relevant to refer to the same.

27. The relevant portions of the said judgement of the Delhi High Court in the case of **IPRS Vs. Entertainment Network (India) Limited** (*supra*) are as follows: -

“30. That brings me to the 2012 amendment of the Copyright Act. One of such amendments, by incorporation of sub Section (10) in Section 19 was noticed by the Supreme Court. However in the year 2012, there were other amendments also to the Act. The first question is, whether such amendments and effect thereof is to be considered while adjudicating these suits, cause of action wherefor accrued much prior to the year 2012. The Supreme Court, while dealing with the matter in the year 2016, held it to be not necessary though if IPRS even if not entitled to interim relief prior to 2012, after 2012 were to be entitled to interim relief, if the 2012 amendment entitled IPRS thereto. Following the said reasoning, this Court also, without any amendment to the plaint, while finally disposing of these suits, is not required to deal with the 2012 amendment. However if this Court were to be required to deal with the legal position of after 2012, the second question is, whether license from the owners of copyright in literary and musical works, after 2012, is required to be taken in addition to the license from the owner of the copyright in sound recording, while communicating the said sound recording incorporating the said literary and musical

works, to the public and whether the 2012 amendment is retrospective.

31. The 2012 amendment does not alter the provisions of the Act, on interpretation whereof in the judgments aforesaid it was held that communication to the public of underlying literary and musical works as part of sound recording, under authorisation / licence from owner of the copyright in the sound recording, does not require authorisation / permission from the owner of the copyright in the underlying literary and musical works of the sound recording. Thus when Section 19(10) provides that assignment of copyright in any work to make a sound recording which does not form part of any cinematograph film shall not affect the right of the author of the work to claim equal share of royalties and consideration payable for any utilisation of such work in any form, it cannot mean that utilisation of the work as embodied in the sound recording also entitles the owner of the copyright in such work to demand equal share of royalties and consideration payable for the sound recording. To read the same otherwise would make the other provisions, on interpretation whereof it was held that no authorisation is required to be taken from owners of copyright in underlying works of the sound recording, while communicating the sound recording under authorisation of copyright in sound recording, otiose. Any interpretation which makes another provision of the statute redundant or otiose, is to be avoided and the rule of harmonious construction has to be applied. Thus Section 19(10) has to be read as not affecting the right of the author of the underlying works in sound recording, to claim share in royalty payable for utilisation of such works though identically as in the sound recording but in any other form, as had earlier also been held by the Single Judge in the judgment on interim relief in CS(OS) No.1996/2009. To the said extent, the amendment of the year 2012, is clarificatory. Moreover Section 19(10) provides for sound recordings which do not form part of any cinematograph film. The claim of IPRS in the plaint in both the suits is with respect to sound recordings forming part of cinematograph film. IPRS, in the plaint in CS(OS) No.1996/2009, in para 15 has expressly admitted that in India, film music makes up a major part of music industry and the music companies also source the rights from the film producers and effectively own all rights in the underlying works in the said film music also. I thus conclude that the amendment of the Act of the year 2012, even if were to be applied, does not change the legal position as already enunciated in the judgments aforesaid."

28. The said judgement of the learned Single Judge of the Delhi High Court is a subject matter of challenge before the Division Bench. Relying upon the above-quoted observations, it is vehemently contended on behalf of the defendants that the amendments brought about in the Copyright Act with effect from 21.06.2012, are merely clarificatory in nature. Alternatively, it is submitted that even if the object of the Amendment Act of 2012 was to give further rights or protection to the authors of the original underlying musical and literary works, the amendment had fallen short of achieving the object. It was asserted that in the absence of amendments to Sections 13 and 14 of the Copyright Act, which was really the heart of the matter insofar as defining exclusive rights was concerned, mere addition of *provisos* to Sections 17 and 18, as also addition of sub-sections (9) and (10) in Section 19 of the Copyright Act, could be of no avail. It was indicated that when the substantive provisions were not amended, the amendments could at best to be said to be clarificatory in nature and the authors of such underlying literary and musical works could not claim any additional rights through the plaintiff - IPRS.

29. At this stage, it would be necessary to refer to the Statement of Objects and Reasons of the Amendment Act 27 of 2012, which brought about the aforementioned amendments. The relevant portion of the Statement of Objects and Reasons reads as follows: -

“2. The Act is now proposed to be amended with the object of making certain changes for clarity, to remove operational difficulties and also to address certain newer issues that have merged in the context of digital technologies and the Internet. The two World Intellectual Property Organisation (WIPO) Internet Treaties, namely, WIPO Copyright Treaty (WCT), 96 and WIPO Performances and Phonograms Treaty (WPPT), 1996 have set the international standards in these spheres. The WCT and the WPPT were negotiated in 1996 address the 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. The member countries of the WIPO agreed on the utility of wing the Internet treaties in the changed global technical scenario and adopted them consensus. In order to extend protection of copyright material in India over digital works such as internet and other computer networks in respect of literary, dramatic, musical and artistic works, cinematograph films and sound recordings works of performers, it is proposed amend the Act to harmonise with the provisions of the two WIPO Internet Treaties, to the extent considered necessary and desirable. The WCT deals with the protection for the authors of literary and artistic works such as writings, computer programmes; original databases; musical works; audiovisual works; works of fine art and photographs. The WPPT protects certain "related rights" which are the rights of the performers and producers of phonograms. However, India has not yet signed the abovementioned two treaties, Moreover, the main object to make amendments to the Act is that it is considered that in the knowledge society in which we live today, it is imperative to encourage creativity for promotion of culture of enterprise and innovation so that creative people realise their potential and it is necessary to keep pace with the challenges for a fast growing knowledge and modern society.”

30. Thereupon, it was indicated as to what the proposed amendments sought to achieve. In the context of the controversy in the present case, the following clauses are relevant: -

“3. The amendments proposed in the Bill, *inter alia*, seeks to,-

“(i) to (vii) * * * *

(viii) give independent rights to authors of literary and musical works in cinematograph films;

(ix) clarify that the authors would have rights to receive royalties and the benefits enjoyed through the copyright societies;

(x) ensure that the authors of the works, in particular, author of the songs included in the cinematograph films or sound recordings, receive royalty for the commercial exploitation of such works;

(xi) to x (xv) * * * *

(xvi) make provision for formulation and administration

of copyright societies by the authors instead of the owners;

(xvii) make provision for formulation of a tariff scheme by the copyright societies subject to scrutiny by the Copyright Board;”

31. In this context, the report of the Standing Committee of the Parliament leading to introduction of the amendment, also becomes relevant. The report recorded concern expressed by the Members of Parliament, including those who belonged to the creative fields, as also the film and music fraternity. The report records in its deliberations, in the context of authors of such underlying original musical and literary works, as follows: -

“9.12 The Committee observes that the main contention between authors/composers of film lyrics and music compositions and Film/Producers Music Companies is about the rights relating to film music. Film music rights are bundle of copyrights which include synchronization right, performing rights, mechanical reproduction right and sound recording right. Synchronisation right is that when a music or song is synchronised to a film, video, television or commercial etc. Performing rights are right to perform music in public specially in broadcasting (TV /Radio), restaurants, airlines, auditoriums or public functions etc. Mechanical reproduction rights are a royalty paid to a song writer whenever a copy of one of their songs is made. Sound recording rights are owned by producer or a recording company.

9.13 When a song or music is incorporated in a film, it is relating to synchronization right of author and music composer which is assigned to the producer of the film as per section 17 (b) or in the absence of agreement, film producer is the first owner. However, film producer is also getting other independent rights of author and music composer of their works envisaged in section 13 of the Act. As per section 17 (b), he further assigns these rights to the music companies for upfront lump-sum amount. When the films songs are performed separately and independently through TV /Radio, restaurants, airlines, auditoriums or public functions etc. film, producer becomes the first owner and authors/music composers lose economic benefits of exploitation of their works to music companies who become ultimate owners of

these works.

9.14 The Committee also takes note of the fact that independent rights of authors of literary and musical works in cinematograph films are being wrongfully exploited by the producers and music companies by virtue of Supreme Court judgment in *Indian Performing Rights Society vs. Eastern India Motion Pictures Association* (AIR 1977 SC 1443) which held that film producer is the first owner of the copyright and authors and music composers do not have separate right. The Committee, however, observes that in the footnote of this very judgement, Justice Krishna Aiyar also advised as follows:

"the authors and music composers who are left in the cold in the penumbral area of policy should be given justice by recognizing their rights when their works are used commercially separately from cinematograph film and the legislature should do something to help them".

9.15 It was also clarified through this judgement that the right of producer in a film as entitled under section 14(1) (c) cannot trench on the composer's copyright given under section 14(1) (a) when the music is separately played in a restaurant/aeroplane/radio station/cinema theatre. If producer enjoys synchronisation right, authors/composers should enjoy performing right. The footnote of the judgement also states that the twin rights can co-exist, each fulfilling itself in its delectable distinctiveness.

9.16 The Committee can only conclude in the light of the long standing infirmity in the copyright law outlined above that proposed amendments in section 17 and 18 were overdue. It has taken more than thirty years for the legislature to act upon a Supreme Court directive which indeed is a very sad state of affairs. The Committee emphatically recommends that this long standing infirmity in the copyright law needs to be removed without any further delay."

32. It is relevant that while proposing introduction of *provisos* in Section 18 and sub-sections (9) and (10) in Section 19 of the Copyright Act, the Report recorded as follows: -

"10.20 The Committee observes that one of the plain objectives of the proposed legislation is to ensure that the authors of the works, in particular authors of songs included in cinematograph films or sound recordings, receive royalty for

the commercial exploitation of such works. With a view to remove any element of ambiguity which may give rise to complications or different interpretations in future, and also to protect the right of authors and music composers to claim their royalties in non-film works, the Committee recommends following amendments in clauses 6 and 7 of the Bill:”

33. This Court is of the opinion that there can be no serious dispute about the fact that the Statement of Objects and Reasons quoted hereinabove, as also portions of the Report of the Parliamentary Standing Committee quoted hereinabove, can be used as aids for interpreting the provisions of the amended Copyright Act, in order to test the rival submissions. Yet, this Court is clear that ultimately a plain reading of the Copyright Act, as amended in the year 2012, will have to be considered in order to examine as to whether there has indeed been a change in the position of law and whether the plaintiff - IPRS can successfully claim interim reliefs as prayed in the present applications.

34. Hence, it would be appropriate to refer to the relevant provisions of the Copyright Act, as amended in the year 2012, in order to examine the rival submissions. The relevant provisions are quoted hereinbelow: -

“2. Interpretation.- In this Act, unless the context otherwise requires,-

(d) “author” means,-

(i) in relation to literary or dramatic work, the author of the work;

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

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

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

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;

- (dd) “broadcast” means communication to the public--
- (i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or
 - (ii) by wire,
- and includes a re-broadcast;
- (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;
- (ff) “communication to the public” means 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 issuing physical copies of it, whether a 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.
- (j) “exclusive licence” means a licence which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright), any right comprised in the copyright in a work, and exclusive licensee shall be construed accordingly;
- (q) “performance”, in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;
- (xx) “sound recording” means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced;
- (y) “work” means any of the following works, namely:-
- (i) a literary, dramatic, musical or artistic work;
 - (ii) a cinematograph film;
 - (iii) a sound recording;

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.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless--

- (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;
- (ii) in the case of an unpublished work other than a work of architecture, the author is at the date of making of the work a citizen of India or domiciled in India; and
- (iii) in the case of a work of architecture, the work is located in India.

Explanation.--In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist--

- (a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;
- (b) in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a record 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.

(5) In the case of a work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

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,-

- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme:

- (i) to do any of the acts specified in clause (a);
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programmer:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) in the case of an artistic work,--

- (i) to reproduce the work in any material form including--
 - (A) the storing of it in any medium by electronic or other means; or
 - (B) depiction in three-dimensions of a two-dimensional work; or
 - (C) depiction in two-dimensions of a three-dimensional work;

(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;
- (e) in the case of a sound recording,--
- (i) to make any other sound recording embodying it including 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 sound recording;
 - (iii) to communicate the sound recording to the public.

Explanation.--For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

16. No copyright except as provided in this Act.- No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

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-

- (a) * * * *
- (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 authors 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;

(cc)	*	*	*	*
(d)	*	*	*	*
(dd)	*	*	*	*
(e)	*	*	*	*

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.

18. Assignment of copyright.- (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exit or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work 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 an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.

(2)	*	*	*	*
(3)	*	*	*	*

19. **Mode of assignment.-**

(1) to (7) * * * *

(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.

(9) 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 royalties and consideration payable in case of utilisation 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.

(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilisation of such work in any form.”

35. The crucial question that arises for consideration is, as to whether addition of *provisos* to Sections 17 and 18, as also addition of sub-sections (9) and (10) in Section 19 of the Copyright Act, has brought about a change that would result in recognition of additional rights in favour of authors of original underlying literary and musical works. Additionally, can it be said that such amendments have fallen short of the object of such amendment to further protect the rights of such authors, due to the fact that Sections 13 and 14 have remained unamended? At this stage, it would be appropriate to refer to a specific contention raised on behalf of the defendants that since the substantive provisions i.e. Sections 13 and 14 have not been amended, there is no substantive right created or recognized by way of the amendments brought about in the Copyright Act in the year 2012. It is specifically contended that amendments to Sections 13 and 14 were necessary to bring about a substantive change in the Copyright Act, which could have accrued to the benefit of such authors and mere addition of aforementioned *provisos* would not suffice. In other words, it was

contended that a *proviso* could never create a substantive right.

36. In this connection, this Court is of the opinion that the plaintiff - IPRS is justified in claiming that merely because Sections 13 and 14 of the Copyright Act have not been amended, it ought not to *ipso facto* lead to a conclusion that the amendments have fallen short of the object for which they were brought about. There is substance in the contention raised on behalf of the plaintiff - IPRS that in a given situation, even a *proviso* can give rise to a substantive right in favour of a party. It would depend on the nature of the *proviso*, in the context of the scheme of statute and the interplay of various provisions of the statute. In the case of **Dattatraya Govind Mahajan and others Vs. State of Maharashtra and another** (*supra*), a Constitution Bench of this Court considered such a contention and by relying upon earlier judgement of the Supreme Court in the case of **Ishwarlal Thakarlal Almania v. Motabhai Nagjibhai** (*supra*) held that there cannot be a rule that the *proviso* must always be restricted to the ambit of the main enactment. The relevant portion of the Constitution Bench judgement of the Supreme Court in the case of **Dattatraya Govind Mahajan and others Vs. State of Maharashtra and another** (*supra*) reads as follows: -

“8. ... What is limitation of legislative power from the point of view of the State is conferment of right from the point of view of the holder of land within the ceiling limit. The former secures the latter. The second proviso in effect guarantees protection to the holder against acquisition of that portion of his land which is within the ceiling limit except on payment of the market value of such land. It will, thus, be seen that the second proviso clearly confers a right of property on a person holding land under his personal cultivation. This interpretation was, however, assailed by the appellants on the ground that it would convert the second proviso into a substantive provision and that would be contrary to the well recognised canon of construction that a proviso must be read so as to carve out from the main provision something which would otherwise fall within it. Now, it is true that the proper function of a proviso is to except

or qualify something enacted in the substantive clause, which, but for the provision would be within that clause but ultimately, as pointed out by this Court in *Ishverlal Thakorelal Almaula v. Motibai Nagjibhai* "... the question is one of interpretation of the provisos and there is no rule that the proviso must always be restricted to the ambit of the main enactment". Here, the intention of the legislature in enacting the second proviso is very clear and that is to ensure payment of full market value as compensation to a person in personal cultivation of his land where a portion of the land within the ceiling limit applicable to him is acquired by the State Government. But for the second proviso, even if a law authorising acquisition of land within the ceiling limit did not provide for payment of compensation, it would be protected from invalidation under Article 31A. That was not a result which the Parliament favoured. Parliament was anxious to protect the interest of the small holder, the common man who holds land within the ceiling limit and therefore enacted the second proviso requiring that a law which permits acquisition of land within the ceiling limit must provide for compensation at a rate not less than the market value. The second proviso in fact restores the right of property with added vigour in case of small holdings of land. It goes much further than Article 31, clause (2) and provides a larger protection, in that, clause (2) of Article 31 merely requires that a law authorising acquisition should fix an amount to be paid for the acquisition or specify the principles in accordance with which the amount may be determined and the manner in which it may be given - and this may be very much less than the market value - while the second proviso insists that at the least, full market value must be paid for the acquisition. Thus, there can be no doubt that the second proviso confers a right - and this right is higher than the one under clause (2) of Article 31 - on a person in respect of such portion of land under his personal cultivation as is within the ceiling limit applicable to him and if the Act, by creating an artificial concept of a family unit and fixing ceiling on holding of agricultural land by such family unit, enables land within the ceiling limit to be acquired without payment of full market value, it would be taking away or abridging the right conferred by the second proviso. In that event too, it would be protected by Article 31-B since it is included in the Ninth Schedule."

37. In this context, paragraph 8 of the judgement of the Supreme Court in the case of ***Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai*** (*supra*) is also relevant and it reads as follows: -

“8. The proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso. But the question is one of interpretation of the proviso : and there is no rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute a proviso is unrelated to the subject-matter of the preceding section, or contains matters extraneous to that section, and it may have then to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section.”

38. This Court is of the opinion that the above-referred position of law does accrue to the benefit of the plaintiff - IPRS in the present case and there is substance in the contention that the amendments were brought about only where necessary, in order to achieve the object of such amendments. Hence, a strong *prima facie* case is made out by the plaintiff - IPRS in its favour, indicating that the amendments brought about in the Copyright Act in the year 2012, even if in the form of addition of *provisos* to Sections 17 and 18, do have the effect of creating a substantive right in favour of authors of underlying literary and musical works, to assert that the position of law has changed in their favour. It is significant that although Sections 13 and 14 of the Copyright Act have not been amended, but the said provisions as they stand, when read in conjunction with amended Sections 17, 18 and 19, demonstrate that there is indeed a change in position of law brought about in favour of such authors of works.

39. It becomes relevant to note that Sections 13 and 14 incorporate the words ‘subject to the provisions of this section and other provisions of this Act’ insofar as Section 13 of the Copyright Act is concerned and the words ‘subject to the provisions of this Act’ in Section 14 thereof.

The use of the said expression does indicate that exclusive rights recognized in Section 14 of the Copyright Act would be subject to the other provisions thereof. Even the works in which copyright subsists as per Section 13 of the Copyright Act, would be subject, not only to the provisions of that very section but also be subject to other provisions of the Copyright Act. This is of immense significance while considering rival submissions in the present case.

40. The amendments have added *proviso* to Section 17, as also further *provisos* to Section 18, apart from adding sub-sections (9) and (10) in Section 19 of the Copyright Act. These *provisos* and the sub-sections are very much part of the provisions of the Copyright Act and therefore, the operation of Sections 13 and 14 thereof is circumscribed by the said provisions of the Act, in the light of the express use of the words ‘subject to the provisions of this Act’. There is *prima facie* substance in the contention raised on behalf of the plaintiff - IPRS that the amendments were brought about in the year 2012, keeping in mind the use of the expression ‘subject to the provisions of this Act’ in, both, Sections 13 and 14 of the Copyright Act. There is substance in the contention that therefore, there was no need to bring about amendments in Sections 13 and 14 of the Copyright Act, to further the object of the Amending Act of the year 2012.

41. In this regard, reliance placed on behalf of the plaintiff - IPRS on judgement of the Supreme Court in the case of *Adani Gas Limited Vs. Union of India and others*, (2022) 5 SCC 210, is apposite. The Relevant portion of the said judgement reads as follows:

“77. The other reason for holding that the deeming fiction of authorization in the proviso to Section 16 does not apply to all entities, is that the clause is “subject to other provisions of this chapter”. This means that not all entities can be termed as “deemed authorized” entities. In *K.R.C.S. Balakrishna Chetty & Sons & Co. v. State of Madras* this Court explained the use

of the term “subject to” in the following manner:

“6. ... The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning, in our opinion, is "conditional upon".

78. In *Ashok Leyland Ltd. v. State of Tamil Nadu*, this Court held that “subject to” is an expression of subordination:

“92. Furthermore, the expression 'subject to' must be given effect to.

93. In Black's Law Dictionary, 5th Edn. at p.1278 the expression “Subject to” has been defined as under:

‘Subject to.- Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. *Homan v. Employers Reinsurance Corpn.*”

42. Hence, it is clear that whenever the words ‘subject to’ are used, it is an expression having the effect of making a provision subservient to other provisions of the statute. The only response that the defendants could give in that regard was that the words ‘subject to the provisions of this Act’ only indicated that Sections 13 and 14 were subject to Section 52 of the Copyright Act, which indicates as to which acts would not amount to infringement of copyright. This Court is unable to accept the said contention, simply for the reason that Sections 13 and 14 use the words ‘subject to the provisions of this Act’, thereby indicating that Sections 13 and 14 of the Copyright Act are subject to all the other provisions of the Copyright Act. It cannot be said that the parties can be permitted to pick and choose provisions of the Copyright Act as per their convenience while giving meaning to the specific expression ‘subject to the provisions of this Act’. Otherwise, the said words would have specified the provisions to which Sections 13 and 14 were made subject to. It is significant to note that in the Copyright Act, where a provision is made subject to any other specific provision, it is so specified. For instance, Section 55(2) of the Copyright Act specifically reads “...or subject to the provisions of sub-section (3) of section 13,...”. Thus, it

becomes clear that when sections 13 and 14 of the Copyright Act use the words 'subject to the provisions of this Act' the reference is to all the provisions of the Copyright Act, including sections 17, 18, 19 and others. Since the words used in, both, Sections 13 and 14 of the Copyright Act are very clear, this Court finds substance in the contention raised on behalf of the plaintiff - IPRS that the exclusive nature of rights recognized in Section 14 of the Copyright Act, is subject to the provisions of the Copyright Act, including Sections 17, 18 and 19 thereof. There is indeed a strong *prima facie* case made out in that regard in favour of the plaintiff - IPRS.

43. At this stage, it would be necessary to consider the impact of each of the *provisos* added to Sections 17 and 18 of the Copyright Act and sub-sections (9) and (10) added in Section 19 thereof. It is significant that the *proviso* added to Section 17 of the Copyright Act, by way of amendment in the year 2012, specifically lays down that nothing contained in clauses (b) and (c) in the existing *proviso* shall affect the right of the author in the work referred to in Section 13(1)(a) of the Copyright Act. It is relevant that Section 13(1)(a) of the Copyright Act provides that copyright shall subsist in original literary, dramatic, musical and artistic works. This Court is of the opinion that the basis of the findings given in the judgement of the Supreme Court rendered in the year 1977 in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) was interpretation of *provisos* (b) and (c) of Section 17 against the IPRS. Addition of the aforesaid *proviso* by way of amendment in the year 2012 nullifies the effect of *provisos* (b) and (c) of Section 17 of the Copyright Act, which is indeed a significant change brought about in favour of authors whose cause the plaintiff - IPRS is espousing.

44. Similarly, the third and fourth *provisos* added by way of

amendment to Section 18 of the Copyright Act have brought about a major change, insofar as rights of such authors of literary and musical works are concerned. Although Section 18 of the Copyright Act, post amendment, is already quoted hereinabove, for the sake of convenience and emphasis, the third and fourth *provisos* added to Section 18 are again quoted hereinbelow: -

“ Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work 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 an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.”

45. The plaintiff - IPRS has been able to make out a strong *prima facie* case in its favour on the strength of the above-quoted *provisos* to Section 18 of the Copyright Act, for the reason that the rights of authors of such literary and musical work have been placed at a high pedestal in the said *provisos*. It is clear that such authors, by a legislative tool, have been prohibited from assigning or waiving their right to receive royalties for the utilization of their works in any form, under the third *proviso* to Section 18 of the Copyright Act, other than for the communication to the public of such works along with the cinematograph film in a cinema hall. This Court is of the opinion that the words ‘with the cinematograph film in a cinema hall’ make it abundantly clear that the moment such works are utilized in any form other than in a cinema hall, the authors

are entitled to receive royalties.

46. Similarly, insofar as sound recordings not forming part of cinematograph film are concerned, the prohibition by way of such a legislative tool is even wider, because it provides that such authors would have the right to receive royalties ‘for any utilization of such works’ qua a sound recording not forming part of a cinematograph film.

47. This substantive right to royalty in such authors is further emphasized by sub-sections (9) and (10) of Section 19 of the Copyright Act, which indicate that the right of such authors to claim royalties remains unaffected in case of utilization of their works, in the case of a cinematograph film when it is communicated to public other than in a cinema hall, and in the case of a sound recording, whenever it is utilized in any form.

48. This Court is of the opinion that when the *proviso* added to Section 17 and third and fourth *provisos* added to Section 18 along with sub-sections (9) and (10) added in Section 19 of the Copyright Act are read together, the exclusive right of entities like the defendants herein, while communicating the sound recordings to the public becomes subject to the aforementioned provisions incorporated by amendment in Sections 17, 18 and 19 of the Copyright Act. The purpose and object of the amendment appears to have been achieved when Sections 13 and 14 (with the words ‘subject to the provisions of this Act’) are read with the amended Sections 17, 18 and 19 of the said Act.

49. The amendments, particularly *proviso* added to Section 17 of the Copyright Act, have the effect of changing the position of law enunciated by the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*). In the said case, while considering the rights available to authors of such literary

and musical works, the Supreme Court specifically relied upon *provisos* (b) and (c) to Section 17 of the Copyright Act, to hold that no such rights were left with the authors, notwithstanding Section 13(4) of the said Act, as against producers of cinematograph films. It was specifically noted that when such authors parted with their works for valuable consideration under *proviso* (b) and when they created such works in employment under a contract of service with the employer under *proviso* (c) to Section 17 of the Copyright Act, they lost any such rights in the works, if they formed part of the final product produced by the producer or the employer, as the case may be. As a consequence, the authors could not assert any rights as against the first owners of such copyright, being either the producer or the employer. The *proviso* added under Section 17 by way of amendment in the year 2012, specifically provides that nothing contained in *provisos* (b) and (c) of Section 17 of the Copyright Act shall affect the rights of the authors and their works under Section 13(1)(a) of the said Act, thereby legislatively making a departure from the position of law laid down in the judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) and the line of judgements of the Supreme Court and various High Courts following the said position of law. This is crucial for the present case, as the object of the said amendment is sought to be achieved legislatively by introducing the said *proviso* to Section 17 of the Copyright Act.

50. Similarly, the third and fourth *provisos* added to Section 18 read with sub-sections (9) and (10) added in Section 19 of the Copyright Act also introduce a concept hitherto unknown to the said Act. The said *provisos* and sub-sections, added by way of amendment in the year 2012, prohibit the authors themselves from assigning or waiving their right to receive royalties for utilization of their works in cinematograph

films and sound recordings other than in cinematograph films. At this juncture, it is relevant to refer to submissions made on behalf of the plaintiff - IPRS that in the Indian scenario, where film music is part of cinematograph films and forms a major part of communication to the public through radio broadcast, such sound recordings forming part of cinematograph films are also subject matter of the *provisos* and sub-sections added by way of amendment to the Copyright Act in the year 2012. This Court is of the opinion that there is substance in the said contention and that when the arguments raised on behalf of the rival parties are tested, sound recordings forming part of cinematograph films being communicated to the public by the defendants need to be kept in mind, in order to examine as to whether the rights claimed on behalf of the authors by the plaintiff - IPRS are justified, post amendment of the Act.

51. While considering the effect of the said *provisos* and sub-sections added by way of amendment in the year 2012, interpretation of the words ‘utilization of such work’ or ‘utilization of the work’ becomes significant. The defendants have contended that since they have exclusive right under Section 14(e)(iii) to communicate the sound recording to the public, there is no question of the plaintiff - IPRS claiming royalties on behalf of its members (authors) by operation of the aforesaid *provisos* to Sections 17 and 18 as also sub-sections (9) and (10) of Section 19 of the Copyright Act. It is claimed that on each occasion that the sound recording is communicated to the public, the defendants exercise their exclusive right guaranteed under Section 14(e) (iii) of the Copyright Act and it cannot be said to be utilization of the works of such authors of literary and musical works. In order to support the said contention, the defendants fall back on the position of law laid down by the Supreme Court in its 1977 judgement in the case of **IPRS**

Vs. Eastern Indian Motion Pictures Association and others (*supra*).

This is again based on the contention that the said amendments brought about in the Copyright Act in the year 2012 have not changed the position of law at all.

52. This Court finds that there is *prima facie* substance in the contention raised on behalf of the plaintiff - IPRS in this context, to the effect that there is indeed change in the position of law, in line with the stated object of the Copyright (Amendment) Act, 2012, which intends to further protect and guarantee rights of authors of such literary and musical works when their works are utilized in any form. Communicating sound recording to the public can be said to be utilization of such literary and musical works, for the reason that such works form an intrinsic part of the sound recording being communicated. Even though Section 14(e)(iii) of the Copyright Act does indicate that the defendants have an exclusive right to communicate the sound recordings to the public, but it is significant that Section 14 states that such exclusive right as a copyright, including in any sound recording, is subject to the provisions of the Copyright Act. In that light, when Sections 13(1)(a) and 13(4) of the Copyright Act are read in conjunction with *proviso* to Section 17, third and fourth *provisos* to Section 18 and sub-sections (9) and (10) of Section 19 thereof, it becomes clear that the exclusive right of the defendants under Section 14(e)(iii) of the Copyright Act to communicate the sound recording to the public is subjected to the right to collect royalties now available to the authors of such literary and musical works, whose cause the plaintiff - IPRS is espousing.

53. It cannot be said that since the literary and musical works of such authors get subsumed in the sound recording, which under Section 13(1)(c) is also a work in which copyright subsists, the entitlement of authors

of such works to collect royalties would be taken away, despite specific guarantee of such rights by way of amendment in the year 2012, manifested by introduction of *proviso* to Section 17, third and fourth *provisos* to Section 18 and sub-sections (9) and (10) in Section 19 of the Copyright Act. The plaintiff - IPRS has indeed made out a strong *prima facie* case to hold that communication of the sound recording to the public on each occasion amounts to utilization of such underlying literary and musical works, in respect of which the authors thereof have a right to collect royalties. It cannot be disputed that in the Indian context, when radio stations, including the radio stations of the defendants herein, communicate sound recordings, they could be part of cinematograph films or otherwise. But, most of the sound recordings communicated to the public through such radio stations are the part of film music, and therefore, both, the third and fourth *provisos* to Section 18 read with sub-sections (9) and (10) of Section 19 of the Copyright Act come into operation.

54. The third *proviso* to Section 18 read with sub-section (9) of Section 19 of the Copyright Act clearly provides that authors of such literary and musical works are very much entitled to claim royalties to be shared on an equal basis with an assignee of the copyright for utilization of such works in any form other than communication of the works to the public along with the cinematograph film in a cinema hall. A communication to the public of sound recordings that form part of the cinematograph film from radio stations is indeed a form of communication other than communication in a cinema hall along with the cinematograph film. Thus, the authors of such literary and musical works are entitled to claim royalties on each occasion that such sound recordings are communicated to the public through radio stations, including radio stations of the defendants herein.

55. As regards sound recordings that do not form part of any cinematograph film, as per the fourth *proviso* to Section 18 and sub-section (10) of Section 19 of the Copyright Act, the authors of such literary and musical works have the right to collect royalties for utilization of such works in any form. Thus, this Court is of the opinion that the plaintiff - IPRS, while espousing the cause of its members, who are authors of such literary and musical works, has indeed made out a strong *prima facie* case for grant of interim reliefs in the present applications.

56. At this stage, it would be appropriate to consider the specific contention, as a submission on law, made by Mr. Khambata on behalf of the plaintiff - *Yash Raj Films Private Limited* (YRF) in Commercial IP Suit No.21 of 2021 to the effect that the aforesaid *provisos* to Sections 17 and 18, as also sub-sections (9) and (10) of Section 19 of the Copyright Act give rise to a right to claim royalties, which cannot be classified as a copyright. It was contended that the same could perhaps be some right other than copyright. In this connection, reference was made to *proviso* to Section 33(3-A) of the Copyright Act. Much emphasis was placed on the use of the words 'provided that the renewal of the registration of a copyright society shall be subject to the continued collective control of the copyright society being shared with the authors of works in their capacity as owners of copyright or of the right to receive royalty'.

57. In this connection, it would be appropriate to refer to Section 16 of the Copyright Act, which specifies that, 'no person shall be entitled to copyright or any similar right in any work ...'. This Court is of the opinion that the right to collect royalties emanates from copyright held by the authors in such literary and musical works. It is on the basis of such copyright that the right to collect royalties arises. A proper reading

of the provisions of the Copyright Act, including *proviso* to Section 33 thereof shows that a copyright society like the plaintiff herein has the right to issue or grant licences in respect of such literary and musical works incorporated in cinematograph films or sound recordings and therefore, ownership of copyright in such works is the basis of exercising such right, which also includes the right to collect royalty on behalf of such authors. This Court is of the opinion that the purpose of the amendments brought about in the Copyright Act in the year 2012 cannot be defeated by seeking an escape route of claiming that the right to collect such royalties under the amended provisions does not fall within the definition of ‘copyright’.

58. Equally, the contention raised by Mr. Khambata that the words ‘subject to the provisions of this Act’ used in Sections 13 and 14 are relatable only to Section 52 of the Copyright Act, is an attempt on the part of the defendants to turn a complete blind eye to the incorporation of the aforementioned *provisos* in Sections 17 and 18 and sub-sections (9) and (10) of Section 19 of the Copyright Act. In order to avoid the obvious impact of the said amendments, the defendants have claimed that there is no change in position of law as laid down by the Supreme Court in the context of the unamended Copyright Act in the year 1977 in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*).

59. This Court is of the opinion that the nature of amendments brought about in the Copyright Act in the year 2012 need to be considered in the backdrop in which such amendments became necessary. Reference is already made to the Report of the Standing Committee of Parliament, which led to introduction of amendments as also the Statement of Objects and Reasons for bringing about such amendments. All of them point towards additional protection of rights

envisaged for authors of such literary and musical works, who had hitherto lost all their rights once they were assigned to the producers of cinematograph films incorporating sound recordings or sound recordings as such. Therefore, this Court is not in agreement with the opinion expressed by the learned Single Judge of the Delhi High Court (Endlaw, J.) in the order dated 04.01.2021 passed in **IPRS Vs. Entertainment Network (India) Limited** (*supra*). As noted hereinabove, in the first place, when the suits themselves concerned disputes between the parties pertaining to a period prior to introduction of the amendment in the year 2012 (admittedly, the suits were filed in the year 2006 and 2009), in that sense, the Court in the said suits was not called upon to decide the impact of the amendments of the year 2012. The fact that the suits were filed much prior to the introduction of the amendments is noted in the said order of the Delhi High Court. Yet, the Delhi High Court in the said order proceeded to consider the effect of the said amendments and in a short discussion, consisting of only two paragraphs, concluded that the amendments brought about in the year 2012 in the Copyright Act were merely clarificatory in nature. The aspect of the use of the words ‘subject to the provisions of this Act’ in Sections 13 and 14 read with the *provisos* introduced to Sections 17 and 18 and sub-sections (9) and (10) in Section 19 of the Copyright Act, was not considered or was perhaps not brought to the notice of the Delhi High Court in the said case. There is no reference to the objects and reasons for which the amendment was brought about, and therefore, this Court is not persuaded to accept the opinion of the Delhi High Court in the said case, that the amendments of the year 2012 were merely clarificatory in nature and that the position of law has not undergone any change at all.

60. There is no substance in the contention of the defendants that since appeals from the said order are pending before the Division Bench

of the Delhi High Court, this Court may not consider the present applications. This Court is of the opinion that the issue pertaining to the effect of the amendments brought about in the Copyright Act in the year 2012 and the entitlement of the plaintiff IPRS for interim reliefs squarely arises in the present applications and therefore, this Court can consider the same. In any case, as noted hereinabove, the said issue did not directly arise in the said proceedings before the learned Single Judge of the Delhi High Court as the suits therein were filed in the years 2006 and 2009.

61. In the case of **IPRS Vs. Aditya Pandey** (*supra*), the Delhi High Court did refer to the provisions of law concerning the rights of authors of such original works in United Kingdom and United States of America. It was found that the statutes therein did provide specific rights and protection to such authors and in the absence of any such provisions in the Copyright Act of India, particularly in the light of interpretation of the provisions thereof in the judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*), IPRS could not claim any reliefs. In fact, in paragraph 48 of the said judgement, the learned Single Judge of the Delhi High Court does indicate that the contention raised on behalf of the IPRS with regard to the underlying rights of the authors of original works could be appreciated, but for the position of law specifically laid down by the Supreme Court in the context of the unamended Copyright Act in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*). It is significant that the said order of the Delhi High Court also concerned a suit filed by the IPRS in the year 2006 and the controversy was adjudged on the basis of the Copyright Act, as it stood, prior to the amendments of the year 2012. At this stage, it would be appropriate to notice that in the Statement of Objects and Reasons of the

Copyright (Amendment) Act, 2012, relevant portions of which have been quoted hereinabove, it is specifically recorded that the World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT) deals with the protection of authors of literary and artistic works such as writings, music works etc. In that context, it is noted that the amendment in the Copyright Act was proposed to harmonize the provisions of the Copyright Act with such international treaties, to which India is a party. When this aspect is appreciated along with clauses (viii), (ix), (x) and (xvii) of the objects that the amendment seeks to achieve, it becomes clear that post-amendment, the Copyright Act does provide for specific rights to such authors of literary and musical works, notwithstanding the exclusive right of entities like the defendants to communicate sound recordings to the public.

62. It is significant that clause (viii) of the Objects and Reasons seeks to give independent rights to authors of literary and musical works, clause (ix) thereof clarifies that the authors would have rights to receive royalties and benefits through copyright societies like the plaintiff - IPRS and crucially clause (x) thereof ensures that the authors of the works, in particular, authors of songs included in cinematograph films or sound recordings, receive royalty for the commercial exploitation of such works. The third and fourth *provisos* added to Section 18 and sub-sections (9) and (10) added to Section 19 of the Copyright Act have to be appreciated and applied in the backdrop of such objects sought to be achieved by the amendment of the Copyright Act. It is significant that clause (xvii) of the Statement of Objects and Reasons seeks to make provisions for formulation of a tariff scheme by the copyright societies, subject to scrutiny by the concerned authority. Therefore, it is not as if the authors of such literary and musical works would have unbridled power to be exercised through copyright societies, to the detriment of entities like the defendants herein.

63. As per Rule 56 of the Copyright Rules, 2013, framed after the

amendment of the Copyright Act in the year 2012, a copyright society is entitled to frame and publish a scheme of tariff under Section 33-A of the Copyright Act (also introduced by the very same amendment of the year 2012), setting out the quantum of royalties it proposes to collect on behalf of its members, such as authors of literary and musical works. Such tariff scheme can be revised periodically, not earlier than a period of 12 months by following the Rules. Rule 57 of the Copyright Rules, 2013 provides for an appeal, if any person is aggrieved by the tariff scheme specified in the Rule 56 thereof. Thus, there is a mechanism provided under the Rules for redressal of grievance, if any, as regards the quantum of tariff. Rule 58 of the said Rules provides that a copyright society shall frame scheme for distribution of royalties amongst its members whose names are entered in the Register of Authors and Owners. A detailed scheme is provided as to the manner in which such royalties would be distributed. Rule 59 of the said Rules provides for management of the copyright society. Sub-rule (6) to Rule 59 of the said Rules specifically provides that there shall be equal representation for authors and owners in the Governing Council, who shall be elected from the General Body by majority of members present and voting. This further indicates the endeavor under the said Rules, post-amendment of the Act in the year 2012, to provide adequate representation to such authors, so that their interests, as sought to be protected under the amended provisions, are properly taken care of. The entire scheme under the amended Copyright Act and the Rules framed thereunder in the year 2013, appears to be geared towards ensuring that the authors of such literary and musical works and similarly situated persons get their due, which they were deprived of under the existing legislative scheme and the law laid down in that context in the judgement of the Supreme Court in the case of **IPRS Vs. Eastern Indian Motion Pictures Association and others** (*supra*) and subsequent judgements. The plaintiff - IPRS has indeed made out a strong *prima facie* case to claim that the position of law now stands changed and the defendants cannot avoid payment of

royalties to such authors, whose cause is espoused by copyright societies like the plaintiff herein.

64. This Court is not in agreement with the learned counsel for the defendants that the amendments in the present case have not brought about any fundamental change to alter the conditions based on which the original position of law was clarified by the Supreme Court. Reliance placed on judgements in the case of *Shri Prithvi Cotton Mills Limited and others Vs. Broach Borough Municipality and others*, (1969) 2 SCC 283; *Bhubaneshwar Singh and another Vs. Union of India*, (1994) 6 SCC 77; and *Indian Aluminium Co. and others Vs. State of Kerala*, (1996) 7 SCC 637, is also misplaced in that context. As observed hereinabove, this Court is of the opinion that the plaintiff - IPRS has made out a strong *prima facie* case in these suits that the amendments brought about in the Copyright Act with effect from 21.06.2012, have indeed fundamentally changed the manner in which the rights of authors of original works like literary works and musical works are to be treated. Amendments have been brought about wherever necessary in the relevant provisions of the Act to achieve the object for which such amendments have been introduced.

65. Insofar as the aspect of delay and acquiescence is concerned, this Court is of the opinion that on each occasion that the works of such authors are utilized when the defendants communicate sound recordings to the public, the cause of action for them arises. To say that the amendments were brought about in the year 2012, and therefore, interim reliefs cannot be granted, is an unacceptable contention, for the reason that mere delay or alleged acquiescence on the part of such authors cannot be a ground to deprive them of interim reliefs, which they otherwise deserve, in the light of the fact that a strong *prima facie* case is

indeed made out on their behalf. If the argument pertaining to delay and acquiescence is to be considered, equally the fact that the defendants on some occasions did enter into agreements recognizing such rights of the authors of literary and musical works would also have to be taken into account. But, what is of significance is that the Copyright Act, as it stands, post amendment does indicate that the plaintiff - IPRS as the copyright society is entitled to press for such interim reliefs for the benefit of its members i.e. the authors of such literary and musical works that are utilized in cinematograph films and sound recordings.

ORDER

66. In the light of the above, interim reliefs are granted in Interim Application (L) No.9452 of 2022 in Commercial IP Suit No.193 of 2022 in terms of prayer clauses (i) and (ii), which read as follows: -

“(i) Grant an order of *interim injunction* restraining the Defendant and its directors, proprietors, partners, principal officers, servants, agents, assigns and representatives and all other acting for and on their behalf from either engaging in themselves or authorizing, the public performance / communication to the public, of the Applicant’s repertoire of literary and musical works, in any form or manner whatsoever, including as part of sound recordings, or doing any other act amounting to an infringement of the Applicant’s copyright and/or statutory right in the said works, without making payments of royalties as per the Tariff of the Applicant;

(ii) Grant an order of *interim injunction* requiring the Defendant and its directors, proprietors, partners, principal officers, servants, agents, assigns and representatives and all other acting for and on their behalf to announce the names of the author members of the Applicant and principal performers of the works with each broadcast of the Literary Works and Musical Works of the Applicant by the Defendant via its FM Radio Broadcasting Stations in compliance with Section 31D(5) of the Copyright Act, 1957;”

67. Similarly, there shall be interim reliefs in Interim Application No.1213 of 2022 in Commercial IP Suit No.84 of 2022 in terms of prayer clauses (i) and (ii), which read as follows: -

“(i) Grant an order of *interim injunction* restraining the Defendant and its directors, proprietors, partners, principal officers, servants, agents, assigns and representatives and all other acting for and on their behalf from either engaging in themselves or authorizing, the public performance / communication to the public, of the Plaintiff’s repertoire of literary and musical works, in any form or manner whatsoever, including as part of sound recordings, or doing any other act amounting to an infringement of the Plaintiff’s copyright and/or statutory right in the said works, without making payments of royalties as per the Tariff of the Plaintiff;

(ii) Grant an order of *interim injunction* requiring the Defendant and its directors, proprietors, partners, principal officers, servants, agents, assigns and representatives and all other acting for and on their behalf to announce the names of the author members of the Plaintiff and principal performers of the works with each broadcast of the Literary Works and Musical Works of the Plaintiff by the Defendant via its FM Radio Broadcasting Stations in compliance with Section 31D(5) of the Copyright Act, 1957;”

68. The plaintiff IPRS can demand royalties in terms of the quantum already determined in proceedings initiated in that regard and as per the rates presently in vogue as per orders passed in such proceedings, which may be revised in accordance with law during the pendency of the present suit. But at the same time, it is clarified that interim reliefs granted in terms of prayer clauses (i) in both the applications shall come into force upon the plaintiff - IPRS communicating to the defendants the demand of royalties and if the defendants fail to pay such royalties within six weeks of receipt of such communication.

69. Needless to say, the interim reliefs granted hereinabove shall

operate against the defendants from the date of this order, during the pendency of the suits. It is also clarified that the observations made in

this order are only for the purpose of deciding and disposing of the present applications for interim reliefs.

70. The applications stand disposed of in above terms.

(MANISH PITALE, J.)

Minal Parab



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