

INTELLECTUAL PROPERTY: COPYRIGHT

A. Court's Jurisdiction to Grant Injunction: Not Ousted When Infringement Established

The Hon'ble Delhi High Court recently, vide its judgment dated August 13, 2009, in the case of Super Cassettes Industries Ltd. ("Plaintiff") Vs. Mr. Punit Goenka and Anr. ("Defendants") resolved the issue whether the pendency of an application before the Copyright Board for grant of compulsory license deprives the civil courts of their power to grant an injunction, thereby defining the scope of jurisdiction of the civil courts.

Facts-

- The Plaintiff had built up a repository of copyrighted works which were collectively licensed to the broadcasting channels.

- The grievance of the Plaintiff arose out of the unhealthy licensing arrangements which the Plaintiff had entered into with the Defendants. The Defendants, in contravention to the terms of the licensing agreement, stopped paying the royalty due and continued to illegally use the Plaintiff's repertoire even after the expiry of the term of the licensing agreement.
- Aggrieved, the Plaintiff filed the suit for permanent injunction in order to restrain the Defendants from infringing the copyrights owned by the Plaintiff.
- During the pendency of the suit, the Defendants made an application to the Copyright Board for the determination of the royalty to be paid by the Defendants to the Plaintiff.
- The Defendants resisted the suit, inter alia, on the ground that the Court's jurisdiction is ousted as the 'fixation of royalty' is the exclusive domain of the Copyright Board.

Held-

The Court held that the mere factum of filing of application before the Copyright Board cannot be equated with the grant of compulsory license and the jurisdiction of the Court to grant an injunction is thus not ousted.

Comments-

The judgment marks an important step in defining the scope and ambit of the jurisdiction of the civil courts and clarifies that mere filing of an application for compulsory licensing before the Copyright Board does not bar the Civil Court's jurisdiction to deal with and grant injunction where infringement has been proved.

B. Intellectual Property Matters: Strict Compliance with the Proviso to Order XVII Rule 1(2) of C.P.C.

The Hon'ble Supreme Court of India ("SC"), vide its order dated September 16, 2009 in the case of Bajaj Auto Limited ("Bajaj") Vs. TVS Motor Company Limited ("TVS"), has directed all Courts to strictly comply with the proviso to Order XVII Rule 1(2) of the Code of Civil Procedure, 1908 in the matters relating to intellectual property rights. The proviso to Order XVII Rule 1(2) reads as follows:

- “(a) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.
- (b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.
- (c) the fact that the pleader of a party is engaged in another Court shall not be a ground for adjournment.
- (d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.
- (e) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-

examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.”

Facts-

A suit¹ had been filed by Bajaj before the Single Judge of the Madras High Court alleging infringement of its patent no. 195904 under the Indian Patents Act, 1973. The Single Judge granted an interim injunction on February 16, 2008. Challenging the said interim order, an appeal was filed by TVS before the Division Bench of the Madras High Court which allowed the appeal by the impugned order dated May 18, 2009. An appeal was filed before the SC by a special leave petition against the impugned order of the Division Bench of the Madras High Court dated May 18, 2009.

Held-

The SC had held in the case of Shree Vardhman Rice & Gen Mills v. Amar Singh Chawalwala as follows:

“Without going into the merits of the controversy, we are of the opinion that the matters relating to trademarks, copyrights and patents should be finally decided very expeditiously by the Trial Court instead of merely granting or refusing to grant injunction.

Experience shows that in the matters of trademarks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally. This is not proper.

...

In our opinion, in matters relating to trademarks, copyright and patents, the proviso to Order XVII Rule 1(2) C.P.C. should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit.”

The SC had directed that the directions in the aforesaid order be carried out by all Courts and Tribunals in this country punctually and faithfully.

Without going into the merits of the controversy, the SC directed TVS to file written statement in the suit, if not already filed, on or before the last date for closing of the Madras High Court for Dussehra holidays and requested the learned Single Judge to commence the hearing of the suit on the re-opening of the Madras High Court after holidays and then carry it on a day to day basis. No adjournment whatsoever would ordinarily be

¹ Bearing No. C.S. No. 1111 of 2007

granted and the case would finally be disposed of on or before November 30, 2009.

Comments-

This is a landmark judgment of the SC. The SC has expressed its unhappiness through this judgment over the litigations pending in various courts in the Country. In India, suits relating to the matters of patents, trademarks and copyrights are pending for years and litigation is mainly fought between the parties about the temporary injunction. This, according to the Court, is an unsatisfactory state of affairs, and hence the above quoted order was passed to serve the ends of justice.

DSK Legal Knowledge Center

Contact Details: dsklegal.knowledgecenter@dsklegal.com

Mumbai Office
4th Floor, Express Towers,
Nariman Point,
Mumbai 400 021
India
Tel: (91 - 22) 6658 8000
Fax: (91 - 22) 6658 8001

Delhi Office
46, Aradhana, Chanakyapuri,
New Delhi 110 066
India
Phone: (91 - 11) 2687 1122; 2687 1133;
2687 1144
Fax: (91 - 11) 2687 1155

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