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

***Reserved On: 13<sup>th</sup> February 2023***

***Pronounced on: 12<sup>th</sup> May, 2023***

+ CS(COMM) 74/2021 & 1, I.A. 2289/2021 (*Order XXXIX Rules 1 and 2 CPC*), I.A. 3508/2021 (*Order I Rule 10 CPC*), I.A. 8789/2021 (*for taking w/s on record*), I.A. 8790/2021 (*Order I Rule 10 CPC*), I.A. 8796/2021 (*Order VIII Rule 1 CPC*), I.A. 8838/2021 (*Section 151 CPC*), I.A. 8839/2021 (*Exemption*) and I.A. 1430/2023 (*Order II Rule 1(4) CPC*)

TEN EVENTS AND ENTERTAINMENT ..... Plaintiff  
Through: Mr. Rajshekhar Rao, Sr. Advocate with Mr. Abhishek Malhotra, Mr. Rommel Khan, Dr. Mishra M. Kumar and Mr. Visakha Gupta, Advs.

versus

NOVEX COMMUNICATIONS PRIVATE LIMITED & ORS.

..... Defendants  
Through: Mr. Chander M. Lall, Sr. Advocate with Mr. Jasdeep Singh Dhillon and Ms. Mohina Anand, Advs. for D-1  
Mr. Akhil Sibal, Sr. Advocate with Mr. Ankur Sangal, Ms. Suchita Roy, Ms. Trisha Nag, Ms. Asavari Jain and Ms. Debashree Mukherjee, Advs. for D-2  
Mr. Vivek Chib, Sr. Advocate with Ms. Deepshikha Sarkar, Adv. for D-3  
Mr. Tejveer Singh Bhatia, Mr. Utsav Mukherjee and Mr. Sudeep Chatterjee, Advs. for D-4  
Mr. Vokram Grover and Mr. Harish Chauhan, Advs. for D-6  
Mr. Sanjeev Sindhvani, Sr. Advocate with Ms. Rajeshwari H and Mr. Deepanshu Nagar, Advs. For D-7

Mr. Sumit Goel, Ms. Sonal Gupta, Ms. Swati Bhardwaj and Mr. Abhishek Thakral,  
Adv. for D-8

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

**J U D G M E N T**  
**12.05.2023**

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1. The present suit has been instituted by the plaintiff Ten Events & Entertainment, involved in providing event management services, under Section 60<sup>1</sup> of the Copyright Act, 1957 read with Section 34<sup>2</sup> of the Specific Relief Act, 1963.

**The *lis*, in a nutshell**

2. As an event management enterprise, the plaintiff organises, among other things, wedding ceremonies in luxury hotels. In the course of such ceremonies, songs are played by disc jockeys (DJs), to accompany the festivities. The hotels have written to the plaintiff, requiring the plaintiff to obtain a license from Defendants 1 to 3, who claim to hold copyright in these songs. These communications, from

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<sup>1</sup>60. **Remedy in the case of groundless threat of legal proceedings.** – Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in Section 34 of the Specific Relief Act, 1963 (47 of 1963), institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in any such suit –

(a) obtain an injunction against the continuance of such threats; and

(b) recover such damages, if any, as he has sustained by reason of such threats:

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.

<sup>2</sup>34. **Discretion of court as to declaration of status or right.** – Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

the hotels to the plaintiff are, in turn, alleged, in the plaintiff, to have been issued on the basis of communications from Defendants 1 to 3 to the hotels, whereby Defendants 1 to 3 have called upon the hotels to ensure that any person, playing songs in which they hold copyright, obtains a license or a no objection certificate (NOC) from them before doing so. According to the plaintiff, no such license or NOC is required, in view of Section 52(1)(za)<sup>3</sup> of the Copyright Act.

3. To clear the air, it becomes necessary to refer, even at this juncture, to a pointed assertion in the plaintiff, in support of which there is no factual material whatsoever. Para 14 of the plaintiff reads thus:

“14. Recently, the Plaintiff has been harassed by the illegal conduct of Defendants Nos 1 to 3, who have instructed Defendants Nos 4 to 8, and presumably, other hotel members of Defendant No. 9, to obtain and submit No-Objection Certificates (NOCs) from Defendants Nos 1 to 3 for any sound recordings played by the Plaintiff during the weddings at the hotel venues owned/operated by Defendant Nos 4 to 8, despite being informed that such usage is “fair dealing” in terms of the provisions of the Act and is expressly excluded from the definition of infringing acts by virtue of Section 52(1)(za) thereof.”

(Emphasis supplied)

*There is no communication, or other material, to indicate that Defendants 2 or 3 ever communicated with the Hotels, to the effect that a licence/NOC would have to be obtained from them before their recordings were played in any wedding ceremony, or threatening them with liability or legal proceedings in the alternative. Defendant*

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*Explanation.* – A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

<sup>3</sup> 52. **Certain acts not to be infringement of copyright.** –

(1) The following acts shall not constitute an infringement of copyright, namely –  
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(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

*Explanation.* – For the purpose of this clause, religious ceremony includes a marriage procession and other social festivities associated with a marriage.

1 has, however, addressed such a letter, on 14<sup>th</sup> December 2020, to which I would presently allude. This aspect becomes relevant as the holding out of a threat of liability or legal proceedings, for copyright infringement, by the defendant, is the *sine qua non* for a suit to be maintainable against such defendant under Section 60 of the Copyright Act.

4. There is, admittedly, no communication between Defendants 1 to 3 and the plaintiff. However, the insistence of Defendants 1 to 3, that any person playing the songs in which they hold copyright in wedding ceremonies has necessarily to obtain a license/NOC from them is, according to the plaintiff, *ex facie* illegal, being in the teeth of Section 52(1)(za) of the Copyright Act. Inasmuch as this insistence, by Defendants 1 to 3, in their communications to the hotels, has in turn resulted in the hotels writing to the plaintiff, requiring the plaintiff to obtain a license from Defendants 1 to 3 before playing the songs in which they hold copyright, the plaintiff has instituted the present suit, praying, *inter alia*, as under:

“47. In view of the above facts and circumstances, it is most respectfully prayed that this Hon’ble Court be pleased to:

(a) Pass an order or decree declaring that there is no copyright infringement when sound recording and/or musical works and lyrics are utilised, by the Plaintiff or otherwise, at marriages and ceremonies associated thereto, in view of the express exemption from copyright infringement provided in Section 52(1)(za) of the Act;

(b) Pass an order and decree, declaring that neither a license nor a no objection certificate is required to be taken from the Defendant Nos 1-3 and/or any other Defendant hotels, in relation to the use/utilisation of music at such marriage ceremonies;

(c) Pass an order and decree annulling the licenses/NOCs taken by the Plaintiff from Defendant Nos. 1-3 in relation to the use of music at marriage and related

ceremonies organised by the Plaintiff in December 2020 2 February 2021;

(d) Pass an order and decree of permanent injunction restraining the Defendants, their Directors, employees, officers, servants, agents, associates and group companies, and/or others acting for or on their behalf from issuing notices/requiring the Plaintiff or other similar entities to seek a license/NOC from Defendant Nos. 1-3 for marriage processions and ceremonies associated with marriages and consequently an order that such threats/notices/communications are illegal and hence groundless;

(e) Pass an order directing Defendant No. 1 to refund the amount of ₹ 2,00,000/-already paid by the Plaintiff under duress for the weddings held between December 2020 to February 2021.”

Additionally, the suit seeks damages and costs.

5. The plaintiff has filed, with the suit, IA 2289/2021, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), seeking interlocutory injunctive reliefs. The prayer clause in the application reads thus:

“In the circumstances aforesaid, the Applicant/Appellant most respectfully prayed that this Hon’ble Court may be pleased to:

a) Pass an interim order restraining the Defendants, their Directors, employees, officers, servants, agents, associates and group companies, and all others acting for or on their behalf from issuing notices/requiring the Plaintiff or its members to seek a license/NOC from Defendant Nos. 1-3 for marriage processions and ceremonies associated with marriages, pending final adjudication of the accompanying plaint;

b) pending final adjudication of the plaint, grant an ex parte ad interim order restraining the Defendants, their Directors, employees, officers, servants, agents, associates and group companies, and/or others acting for or on their behalf from issuing notices/requiring the Plaintiff or its members to seek a license/NOC from Defendant Nos. 1-3 for marriage processions and ceremonies associated with marriages; AND

Pass any such other order(s) that this Hon'ble Court may deem fit in the interest of justice.”

This judgement disposes of IA 2289/2021.

The respondents

6. The plaintiff has impleaded, as respondents,
- (i) the copyright holders of the recordings, who have allegedly written to the hotels, requiring licenses to be obtained from them before any works, in which they hold copyright, are played in wedding ceremonies held at the hotels, as Defendants 1 to 3, namely
    - (a) Novex Communications Pvt. Ltd. (“Novex”, hereinafter) as Defendant 1,
    - (b) Phononographic Performance Ltd. India (“PPL”, hereinafter) as Defendant 2 and
    - (c) Indian Performing Right Society Ltd (“IPRS”, hereinafter) as Defendant 3,
  - (ii) various hotels and corporate entities owning and managing hotels as Defendants 4 to 8, namely
    - (a) ITC Ltd as Defendant 4,
    - (b) Eros Grand Resorts & Hotels Pvt Ltd as Defendant 5,
    - (c) Hyatt India Consultancy Pvt Ltd as Defendant 6,
    - (d) Marriott Hotels India Ltd as Defendant 7 and
    - (e) Indian Hotels Co Ltd as Defendant 8 and
  - (iii) the Federation of Hotel and Restaurant Associations of India (FHRAI) as Defendant 9.

Proceedings thus far

7. Summons in the suit, and notices in the applications filed with the suit, were issued on 12<sup>th</sup> February 2021. The plaintiff was directed, on the next date of hearing, to deposit the fees demanded by Defendants 1 and 2.

8. *Vide* order dated 16<sup>th</sup> February 2022, Defendant 6 was deleted from the array of parties. Defendants 7, 8 and 9 (Marriott, IHCL and FHRAI) became, thereby, Defendants 6, 7 and 8.

9. Detailed arguments were heard by me, in the present matter, spanning 15<sup>th</sup> December 2022, 20<sup>th</sup> December, 2022, 21<sup>st</sup> December 2022, 5<sup>th</sup> January 2023, 10<sup>th</sup> January 2023, 17<sup>th</sup> January 2023, 6<sup>th</sup> February 2023, 7<sup>th</sup> February 2023, 9<sup>th</sup> February 2023 and 13<sup>th</sup> February 2023, on which date orders were reserved in IA 2289/2021.

10. Mr. Rajshekhar Rao, learned Senior Counsel for the plaintiff, pressed for interim relief is sought in IA 2289/2021. Mr. Chander M. Lall, Mr. Akhil Sibal, Mr Vivek Chib and Mr. Sanjeev Sindhvani, learned Senior Counsel for Defendants 1, 2, 3 and 8 and Mr. Tejveer Singh Bhatia, Mr. Vikram Grover and Mr. Sameer Parekh, learned Counsel for Defendants 4, 6 and 8 submitted, *per contra*, that the suit was not maintainable and that the reliefs sought therein could not be granted either under section 60 of the Copyright Act or under Section 34 of the Specific Relief Act, read independently or in conjunction. On merits, too, it was submitted that no case for grant of any relief to the petitioner was made out.

**11.** Detailed written submissions have also been filed by the parties, both before and after reserving of orders. The rival stands of various parties are to be found in the following pleadings/submissions, tendered in writing:

- (i) the plaint, replications to the written statements of Defendant 1 Novex, Defendant 2 PPL, Defendant 3 IPRS, and written submissions dated 17<sup>th</sup> February 2021 and 23<sup>rd</sup> February 2023, of the plaintiff,
- (ii) written statement and written submissions, undated and dated 20<sup>th</sup> February 2023, of Defendant 1 Novex,
- (iii) written statement and written submissions dated 20<sup>th</sup> February 2023, of Defendant 2 PPL,
- (iv) written statement of Defendant 3 IPRS,
- (v) written statement of Defendant 4 ITC,
- (vi) written statement and written submissions dated 2<sup>nd</sup> May 2022, of Defendant 6 Marriott,
- (vii) written statement and written submissions dated 13<sup>th</sup> February 2023 of Defendant 7 Indian Hotels Co Ltd, and
- (viii) written statement and written submissions dated 20<sup>th</sup> February 2023 of Defendant 8 FHRAI.

**12.** I have applied myself both to the record, as contained in the pleadings and documents filed therewith, as well as the written submissions filed by various learned Counsel, and to the oral arguments advanced across the Bar.

**13.** For reasons to be adduced later in this judgment, I am of the opinion that the objections of Defendants 1 to 3 to the maintainability of this suit, and to the right to seek the remedies, as sought, under



Section 60 of the Copyright Act and Section 34 of the Specific Relief Act, must succeed. More precisely, I am of the view that

- (i) the suit, as filed, is not maintainable by virtue of Order I Rule 3<sup>4</sup> and Order II Rule 3<sup>5</sup> of the CPC, and
- (ii) neither Section 60 of the Copyright Act, nor Section 34 of the Specific Relief Act, would entitle the plaintiff to seek the reliefs sought in the plaint.

Allusions to the actual merits of the controversy, including the interpretation of Section 52(1)(za) of the Copyright Act and the merits of the rival contentions in that regard, would, therefore, be limited, to the extent necessary.

## Rival Stands

### The Plaint

14. The plaintiff is engaged in the business of organising corporate events and private extravaganzas, including wedding ceremonies. Defendants 1 to 3 own copyright in various sound recordings which are played during the course of wedding ceremonies conducted by the plaintiff. These wedding ceremonies often take place at five-star and luxury hotels. The Federation of Hotel Associations of India (FHRAI) has been impleaded as Defendant 9 as, according to para 9

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<sup>4</sup> 3. **Who may be joined as defendants.** – All persons may be joined in one suit as defendants where –  
(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

<sup>5</sup> 3. **Joinder of causes of action.** –

(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

of the plaint, “it is not possible to implead each and every hotel across the country who the plaintiff apprehends will act in the same illegal manner as the Defendants”. Ergo, avers the plaint, the FHRAI has been impleaded as Defendant 9, as it “appears to be the nodal agency for the hotel industry and has a large number of hotels across the country as its members”.

**15.** The right asserted in the plaint is predicated on Section 52(1)(za) of the Copyright Act. According to the plaintiff, Section 52(1)(za) absolutely exempts, from the scope and ambit of copyright infringement, playing of sound recordings in wedding ceremonies and festivities associated therewith. In violation of the said statutory dispensation, alleges the plaint, Defendants 1 to 3 have instructed hotels, including Defendants 4 to 8 and, presumably, other hotels as well, to obtain and submit No Objection Certificates (NOCs) from them, before any sound recordings, in which they hold copyright, are played in wedding ceremonies conducted at the hotels. Legal notices, to the said effect, are alleged to have been sent by Defendants 1 to 3 to various hotels. These notices threaten initiation of legal proceedings against the hotels as well as against event management companies such as the plaintiff, if any sound recordings, in which Defendants 1 to 3 hold copyright, are played without obtaining NOCs from them. As a consequence, the hotels, including Defendants 4 to 8 and other members of the FHRAI, have introduced, in their contracts with the plaintiff and other such events management enterprises, as a precondition for booking the hotels as venues for holding wedding ceremonies, obtaining of NOC or licence from Defendants 1 to 3.

**16.** The plaintiff characterises these demands as extortionary. As the demands were raised on the eve of the wedding season, the plaintiff asserts that it was coerced into obtaining such NOCs from Defendants 1 to 3 during the wedding season between December 2020 and February 2021. While, therefore, seeking a declaration from this Court that no such NOCs are required, in law, to be obtained from Defendants 1 to 3 before playing sound recordings, in which they hold copyright, during wedding ceremonies conducted at the hotels, the plaintiff also seeks, in the present plaintiff, refund of the amounts paid by it to Defendants 1 to 3 for obtaining such NOCs during the season December 2020 to February 2021.

**17.** I may note that the plaint also invokes Section 33 of the Copyright Act to allege that, not being copyright societies, Defendants 1 and 2 are not entitled to license sound recordings on behalf of the members. However, during arguments, the plaintiff did not press this line of challenge. Nor has it been asserted in the written submissions filed by the plaintiff, either before or after reserving of orders on the present application.

**18.** The dispute raised in the suit, on merits, is quite simple, as it merely involves interpretation of Section 52(1)(za) of the Copyright Act. However, the defendants have seriously questioned the maintainability of the present suit. As the occasion to examine the merits of the dispute would arise only if the reliefs sought in the suit are maintainable, it is necessary to first address the question of maintainability.

#### The impugned communications

19. For this purpose, it is necessary to reproduce the essential parts of the impugned communications, with which the plaintiff claims to be aggrieved.

20. On 14<sup>th</sup> December 2020, Defendant 1 Novex wrote to Marriott Hotels India Pvt Ltd (“Marriott”, hereinafter). The subject of the communication was “Request to obtain NOC for utilization of sound recording of Novex for all events held at your Hotels as per law”. Placing reliance on Section 51<sup>6</sup> of the Copyright Act and certain judicial orders, the opening paras 1 to 4 and the concluding paras 10 to 12 of the communication read thus:

“1. We would like to draw your kind attention to Section 51 of the Copyright act which deals with infringement of copyright and section 51(a)(i) and 51(a)(ii) provides the instances when copyright in the work shall be deemed to be infringed.

2. In terms of Section 51(a)(i), the copyright in work is deemed to be infringed when any Hotel and/or premises without the requisite license does anything, the exclusive rights to do which is conferred by the Copyright upon the owner of the Copyright.

3. In terms of Section 51(a)(ii) the copyright in work is deemed to be infringed when any Hotel and/or premises without a

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<sup>6</sup> 51. **When copyright infringed.** – Copyright in a work shall be deemed to be infringed –

(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act –

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person –

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India,

any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

*Explanation.* – For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

license permits for any place to be used for the communication of the work to the public where such communication constitutes an infringement of copyright.

4. *Both the sub-clauses of Section 51(a) are relevant to Marriott Hotels since in the case of the sound recording it is not only the person playing the sound recording in his events/function who is liable to be prosecuted for infringement of copyright but also the person in charge of the venue (hotel/auditorium/banquet etc.) are also equally liable for the infringement.*

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10. We hereby once again request you to kindly peruse orders attached herewith along with the concerned sections of the Copyright Act, 1957 and *beware the infringement of our Copyright is a serious offence. Further please note that in view of section 51 of the Copyright Act, Marriott group of Hotels cannot seek exemption under Section 52 (za) under any circumstances. The same has been very well established and accepted as per the High Court Orders.*

11. *Therefore we hereby request you to obtain nonexclusive public performance rights in sound recordings to avoid legal actions just as stated hereinabove towards infringement of Novex's copyrights.*

12. Looking forward that you will appreciate and recognise our right to protect our intellectual property rights.”

(Emphasis supplied)

**21.** Following receipt of the afore-extracted communication dated 14<sup>th</sup> December 2020 from Novex, an internal email was circulated within Marriott on 22<sup>nd</sup> December 2020, which reads thus:

“Dear all GM/DOF’s of India Hotels,

This has reference to frequent escalations by our hotels wrt Novex claiming License fee/charges for using their Music License/NOC for Marriages or Marriage -related events as against PPL/ISR a/IPRS offering Licenses/NOC at free of cost.

In continuation to this topic, we have escalated the matter to Legal counsel for obtaining their opinion, which might take some time as they are referring relevant IP/copy right regulations.

However, *in the meantime, we interacted with Novex team along with couple of senior DOF of hotels. Novex management is*

*firm about their claim and decision of making the Music license/NOC mandatory with necessary fees for all Music events, whether commercial or social events. To support this matter they have shared few examples of past court orders and claims that no government executive is higher than the authority of court and completely denies their appearance to 27<sup>th</sup> Aug 2019- Public notice.*

*I strongly recommend all pertains to communicate to clients that Music License/NOC is mandatory and to be obtained for all Commercial and Social events. Deviation is considered as violation of copy right regulation.*

*As per Novex, if any Marriott hotel is allowing clients to play Music without NOC/License, Hotel GM & Ownership is equally responsible for violating copyright regulation as the space is owned by hotel entity. Any deviation will lead to financial loss claim by Novex along with legal notices and charges.*

- It is mandatory for all Clients were conducting Musical events to collect NOC from Music Licensing companies. They might get NOC/License at free of cost or chargeable basis, which Marriott cannot control
- If client is adamant about not collecting NOC, Hotel team must escalate the matter to Music companies and ensure DJ is not allowed and clients do not play music in their events.
- To bring 100% compliance, it is extremely important for hotels to communicate the importance of Music License/NOC to client at the event sales/first interaction

*Please also find attached email Communications from Novex after our meeting. Pls refer to the attachment email – File: “Letter to Marriott” for details of their claim.*

“Please cascade this email message to your Sales team/Event management team & other associated who are responsible for client interaction & compliance to Music license to avoid last-minute discomfort to client on this topic”

Hope this clarifies the status of Music License for Marriage and Marriage related events.

Please feel free to revert for any clarification.”

(Emphasis supplied)

**22.** The Taj Mahal Palace hotel at Jaipur, in its contract with event managers, included the following clause:

“8.3 Playing of live or recorded music performance with a DJ or with musical instruments for any event such as a fashion show, launch party, music events, marriage function, *sangeet* of any family functions, etc. except religious functions shall require licenses/permissions/No objection certificates (NOCs) from the agencies namely (i) Phonographic Performance Limited (PPL), (ii) Indian Performing Rights Society (IPRS), (iii) Novex, (iv) Indian Singer’s Rights Association (ISRA) etc. for the copyrights. The said licenses/permissions/No objection certificates (NOCs) from the agencies shall be obtained by the Client at its own cost and the Company/Hotel shall not be responsible for the same.”

**23.** On 9<sup>th</sup> February 2021, ITC Hotels wrote to Akriti Madan, with a copy marked to the plaintiff, clearly stating that NOC from the New Delhi Municipal Council (NDMC) as well as from Novex was required for any music to be played in the forthcoming events to be held on 14<sup>th</sup> February 2021.

**24.** Similarly, on 9<sup>th</sup> February 2021, the Events Sales Manager in Shangri-La’s Eros Hotel addressed an email to the plaintiff, with reference to the terms of the contract for conducting an event in the Eros Hotel, which included “Novex License for using music rights of (1) Yash Raj films Private limited, (2) UTV Software Communications Ltd and (3) Zee Entertainment Enterprises Ltd in the hotel in the event”. Further, in case the organiser of the event was using any copyrighted music in the event, he was also required to obtain a special license called “Phonographic Performance License from PPL authorities in Nizamuddin”.

**25.** It is important to reiterate, on facts, that

- (i) the only communication from any of the Defendants 1 to 3, on record, is the communication dated 14<sup>th</sup> December 2020 from Defendant 1 Novex to Marriott,
- (ii) there is no communication from Defendant 2 or Defendant 3, to any person, on record,
- (iii) similarly, of the communications/contracts between the Hotels and the event management companies, including the plaintiff, it is only the e-mail dated 14<sup>th</sup> December 2020 of Marriott which refers to any demand from Novex, and
- (iv) while the other respondents, too, in their contracts with the plaintiff, have introduced a clause requiring them to obtain licences/NOCs from Defendants 1 to 3 before playing recordings in which the said defendants hold copyright, the requirement does not claim to have been included because of any demand by Defendants 1 to 3 in that regard.

**26.** The plaintiff has placed reliance on the following Public Notice No 10-26/2019-CO, dated 27<sup>th</sup> August 2019, issued by the Copyright Office, Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry:

**“Public Notice**

Representations had been received from various stakeholders seeking clarification as to whether a License is required to be obtained for the purpose of utilisation of sound recordings in the course of any marriage related function. The representations had been examined.

2. Section 52 of the Copyright Act, 1957 enlists certain acts which do not constitute an infringement of Copyright. Specifically, Sub- section (1)(za) of the aforementioned section, states that:

*“the performance of a literary, dramatic and musical work or the communication to the public of such work or of a sound recording in the course of any bona fide*



*religious ceremony order an official ceremony held by the Central Government or the State Government or any local authority.*

*Explanation – For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.”*

3. In view of the provision contained in Section 52(1)(za) of the Act, read with the explanation thereto, it is evident that the utilization of any sound recording in the course of religious ceremony including a marriage procession and other social festivities associated with a marriage does not amount to infringement of copyrights and hence no license is required to be obtained for the said purpose.”

### Written Statements and Written Submissions by defendants

#### Written statement of Defendant 1

**27.** Defendant 1 has, in its preliminary objections, submitted that the plaintiff has not even disclosed the nature or kind of the events that it intends to organise. An abstract declaration of the law is, therefore, being sought without setting out the necessary facts. Such a suit cannot be maintained in law.

**28.** It is further contended that Order II Rule 3 of the CPC specifically prescribes combining of separate causes of action against different defendants, where all causes of action do not apply to all the defendants, in a single suit. The grievance of the plaintiff, *vis-à-vis* each of the hotels, it is submitted, is different. Equally, it cannot be said that the cause of action of the plaintiff, if at all, against the hotels, is the same as the cause of action against Defendant 1. Both causes of action cannot, therefore, be combined in one suit in which the hotels, as well as Defendant 1, are impleaded as defendants.

**29.** Section 52(1)(za) of the Copyright Act, it is pointed out, applies only to *bona fide* functions. Whether a particular function is, or is not, *bona fide*, would depend on individual facts and circumstances and the nature of the event involved. To that extent, the “wedding ceremonies” to which the Explanation to Section 52(1)(za) alludes, have to partake of the colour of the religious ceremonies envisaged in the main part of the provision. It is sought to be submitted that the kind of songs over which Defendant 1 holds copyright are not of the kind which are played in *bona fide* religious ceremonies.

**30.** It is further submitted that the expression “social festivities associated with marriage” would not include the multifarious parties and celebrations which take place prior to the marriage and after the marriage. These are, it is submitted, largely in the nature of extravaganzas, and it could never have been the intent of the legislature, while engrafting Section 52(1)(za) of the Copyright Act, to legitimise such extravaganzas.

**31.** In any event, it is submitted that, for want of the requisite details regarding the ceremonies which the plaintiff intends to host, and the nature of the songs/recordings which are intended to be played in the said ceremonies, the suit is liable to be dismissed.

**32.** Reliance has been placed, by Defendant 1, on the judgment of the High Court of Punjab and Haryana in *Phonographic Performance*

*v. State of Punjab*<sup>7</sup> and of the High Court of Gujarat in *Devendrakumar Ramchandra Dwivedi v. State of Gujarat*<sup>8</sup>.

**33.** Finally, the Defendant 1 has submitted, in its written statement, that the Public Notice dated 27<sup>th</sup> August 2019, issued by the Copyright office is without authority of law. It is reiterated that public performance of the recordings in which the defendant holds copyright, by the plaintiff, without obtaining a license from the defendant, would constitute infringement of copyright within the meaning of Section 51 of the Copyright Act.

Defendant 1's undated written submissions

**34.** The defendant has filed two written submissions, one of which is undated, and the other dated 20<sup>th</sup> February 2023.

**35.** In its first, undated written submissions, Defendant 1 contends that, of the four prayers in the suit, only prayer (d) can be sought under Section 60 of the Copyright Act.

**36.** Insofar as the reliance, by the plaintiff, on Section 34 of the Specific Relief Act is concerned, Defendant 1 contends that the plaintiff is not entitled to claim any relief, relating to copyright, under the Specific Relief Act. Relying on the judgments of this Court in *Bristol Myers Squibb Holdings Ireland Unlimited Company v. Natco Pharma*<sup>9</sup> and *Novex Communication Pvt Ltd v. National Restaurant*

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<sup>7</sup> (2012) ILR I (P & H) 602

<sup>8</sup> 2010 (43) PTC 303 (Guj)

<sup>9</sup> 266 (2020) DLT 724

*Association of India*<sup>10</sup>, it is contended that the Copyright Act is a self-contained statute covering all disputes relating to copyright, and that no remedy, relating to copyright infringement, can be sought outside the Copyright Act.

**37.** Defendant 1 has also sought to contradistinguish Section 60 of the Copyright Act with Section 105(1)<sup>11</sup> of the Patents Act, 2000. It is sought to be contended that unlike Section 105(1) of the Patents Act, which permits a declaration to be sought that a proposed action would not amount to infringement of patent, no such provision is contained in the Copyright Act. Prayer (a), therefore, it is submitted, cannot be sought by the plaintiff under Section 60 of the Copyright Act. Insofar as prayers (b) and (c) are concerned, as they are dependent on prayer (a), it is contended that the said prayers would also not lie. Besides, contends Defendant 1, prayer (c) effectively seeks annulment of a voluntarily obtained license, which cannot be granted in law.

Defendant 1's written submissions dated 20<sup>th</sup> February 2023

**38.** At the outset of these submissions, Defendant 1 reiterates its contention that, if a suit such as the present were to be allowed, the plaintiff would be able to maintain a single suit against all hotels

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<sup>10</sup> 249 (2018) DLT 18

<sup>11</sup> 105. **Power of court to make declaration as to non-infringement.** –

(1) Notwithstanding anything contained in Section 34 of the Specific Relief Act, 1963 (47 of 1963), any person may institute a suit for declaration that the use by him of any process, or the making, use or sale of any article by him does not, or would not, constitute an infringement of a claim of a patent against the patentee or the holder of an exclusive licence under the patent notwithstanding that no assertion to the contrary has been made by the patentee or the licensee, if it is shown –

(a) that the plaintiff has applied in writing to the patentee or exclusive licensee for a written acknowledgment to the effect of the declaration claimed and has furnished him with full particulars in writing of the process or article in question; and

(b) that the patentee or licensee has refused or neglected to give such an acknowledgment.

across the country and seek a declaration regarding non-infringement. That, according to Defendant 1, is obviously impermissible.

**39.** It is further submitted that the threat held out by Defendant 1, if at all, was to Marriott, and not to the plaintiff. Once, therefore, Marriott had acceded to the request of Defendant 1, as contained in the notice dated 14<sup>th</sup> December 2020, and, in compliance therewith, modified its contract with the plaintiff accordingly, the plaintiff could not thereafter institute a suit under Section 60 of the Copyright Act, contending that Defendant 1 had extended groundless threats. Any such suit, if at all, could have been instituted only by Marriott. Marriott having chosen to concede to the request of Defendant 1, no suit, on the ground of institution of groundless threats, was at all maintainable under Section 60 of the Copyright Act; least of all at the plaintiff's instance. The plaintiff could not, in such circumstances, treat itself as a "person aggrieved" for the purposes of Section 60.

**40.** Besides, it is submitted, under Section 51 of the Copyright Act, it is only the host of the event, or the Disk Jockey (DJ) or the owner of the venue where the event is to take place, who could obtain a license from the holder of the copyright. No document, authorising the plaintiff to take such a license, on behalf of the host of the event, has been placed on record. Even for this reason, it is submitted that the suit is not maintainable.

**41.** It is next contended that Order I Rule 3 of the CPC bars a suit such as the present. It is pointed out that clauses (a) and (b) of Order I Rule 3 are required to be cumulatively satisfied, as is apparent from the use of the conjunction "and" between the two clauses. Clause (a),

it is pointed out, is clearly not satisfied in the present case. The letter dated 14<sup>th</sup> December 2020 written by Defendant 1 to Marriott cannot be regarded either as constituting the same act or transaction, or as one of a series of acts or transactions, *vis-à-vis* the contracts between the hotels and the plaintiff, or the condition, in the said contracts, with which the plaintiff claims to be aggrieved. These are individual acts/transactions. They cannot, therefore, be combined in one suit, in view of Order I Rule 3 of the CPC.

**42.** It is further submitted that Clause (b) of Order I Rule 3 is also not satisfied, as the cause of action, *qua* each event, would be dependent on that particular event. The controversy in the suit depends, therefore, essentially on the nature and kind of the event being organised.

**43.** Defendant 1 further submits that the suit is also barred under Order II Rule 3 of the CPC. Order II Rule 3 permits joinder of separate causes of action in a suit, against a single defendant, or even against more than one defendants, where the cause of action/causes of action are common to all such defendants. Here, as the plaintiff is pleading different causes of action *vis-à-vis* each hotel, and a separate cause of action *vis-à-vis* Defendants 1 to 3, all such causes of action cannot be joined together in one suit in view of Order II Rule 3 of the CPC. It is pointed out that, even among Defendants 1 to 3, there is no connection. They are unrelated independent entities, and their activities and functions have no relationship with each other.

44. Defendant 1 relies, for this purpose, on the judgment of the Supreme Court in *Shiv Narayan v. Maniklal*<sup>12</sup>.

45. It is further contended that the reliefs sought by the plaintiff are beyond Section 60 of the Copyright Act as is candidly acknowledged in para 32 of the plaint. Defendant 1 reiterates, relying on para 9 of *Bristol Myers Squibb Holdings*<sup>9</sup> and *Time Warner Entertainments Company, L.P v. Columbia Pictures Industries*<sup>13</sup>, that the Copyright Act is a complete code and no relief relating to copyright can be claimed outside it.

46. Apropos Section 34 of the Specific Relief Act, and without prejudice to the aforesaid contention, Defendant 1 submits that, for Section 34 to apply, the plaintiff has to establish that it is entitled to some legal character or legal status. No deprivation of any entitlement or title which enures to the plaintiff under the Copyright Act has been claimed in the suit. Ergo, it is submitted, the plaintiff has failed to establish the existence of any legal character or any legal title which the defendants deny to it, so as to maintain a suit for declaration under Section 34.

47. In fact, contends Defendant 1, the plaintiff's grievance essentially stems from the clause in the contracts between Defendants 4 to 8 and the plaintiff, in which the plaintiff has been asked to obtain NOC/license from Defendants 1 to 3 in respect of the recordings in which the said defendants hold copyright, before being permitted to host any events in the premises of Defendants 4 to 8 in which such recordings would be played. As such, therefore, what is being sought

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<sup>12</sup> (2020) 11 SCC 629

is a declaration in respect of the rights and liabilities of parties in a contract which, as held by this Court in paras 5 to 9 in *Princeton Niketan Pvt. Ltd. v. Faiz Murtaza Ali*<sup>14</sup>, cannot be sought under Section 34 of the Specific Relief Act. Defendant 1, relying on *Gurudwara Prabandhak Committee v. Jagmohan Singh*<sup>15</sup> again reiterates the submission that, for a suit to be maintainable under Section 34, the existence and establishment of a legal character in the plaintiff, which the defendants are denying, is necessary.

48. The plaintiff, submits Defendant 1, cannot be treated as a “person aggrieved” under Section 60 of the Copyright Act. Once the hotels had agreed to the request of Defendant 1, to require the plaintiff to obtain a license/NOC from Defendant 1 before playing the recordings in which Defendant 1 holds copyright, the plaintiff cannot claim to have an independent subsisting grievance against Defendant 1. As such, the plaintiff cannot be treated as a “person aggrieved”. It is submitted that a “person aggrieved” is different from a “person interested”. A “person aggrieved” is one who is deprived of a legal right, or made to suffer a legal grievance as he is wrongly deprived of something to which he is entitled. In *Tirupati Buildings v. RBI*<sup>16</sup>, it is pointed out, the expression “person aggrieved” is defined as one who has suffered a legal injury, not one who is disappointed of a benefit which he may have received if some other order had been made. Reliance is also placed, in this context, on the judgment of the Supreme Court in *M.R. Mini v State of Kerala*<sup>17</sup>.

#### Written statement by Defendant 2

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<sup>13</sup> 1LR 2007 (II)DEL 854

<sup>14</sup> 2010 SCC OnLine Del 4214

<sup>15</sup> 1971 (II) ILR Del 515

<sup>16</sup> 261 (2019) DLT 37



**49.** Defendant 2, in its written statement, has submitted that no threat was ever held out by Defendant 2 to the plaintiff and no such document, holding out any such threat, is available on the record. The contention of Defendant 1 that Defendants 1 to 3 are independent unconnected entities and that, therefore, a single suit could not have been instituted against all of them, has been echoed by Defendant 2.

Defendant 2's written submissions dated 20<sup>th</sup> February 2023

**50.** In its written submissions dated 20<sup>th</sup> February 2023, Defendant 2, at the outset, reiterates its contention that the Copyright Act is a self contained code and reliefs, relating to copyright, are required to be sought within the four walls of the said Act. Apart from the decisions already cited *supra*, Defendant 1 has also relied, for this purpose, on para 12 of *Tekla Corporation v. Survo Ghosh*<sup>18</sup>.

**51.** It is alleged that the plaint does not disclose any cause of action relatable to Section 60 of the Copyright Act. There is no communication either from Defendant 1 or Defendant 2 to the plaintiff. The plaint only refers to a sole communication from Defendant 1 to Defendant 6 Marriott. On receiving the said communication, it is submitted that Defendant 6 could either have filed a suit under Section 60 of the Copyright Act against Defendant 1, or ignored the letter, or accepted the letter and included, in its contract with event managers, a clause requiring a license to be taken from Defendant 1 before playing any recording in which it held

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<sup>17</sup> (1980) 2 SCC 216

<sup>18</sup> 2014 SCC OnLine Del 1579

copyright. Once Defendant 6 had chosen the third option, the plaintiff could not seek, by means of the present suit, a modification of the contractual term included by Defendant 1, which was its own prerogative. The inclusion of the said condition, in the contract between the hotel and the plaintiff, could not be regarded as a threat, and was entirely within the realm of freedom of contract, vested in Marriott – or any of the other Hotel defendants. The plaintiff could not, therefore, move the Court for a declaration that the hotel could not include such a condition in its contract. If the condition was not acceptable to the plaintiff, its option was not to enter into the contract.

**52.** Adverting to a contention, raised by Defendant 7-IHCL, to the effect that the condition requiring the plaintiff to obtain NOC/license from the copyright holders before playing the recordings was in violation of Section 23<sup>19</sup> of the Contract Act, 1872, Defendant 2 submits that no such case was ever pleaded by the plaintiff, and no declaratory or injunctive relief to that effect was sought in the plaint. In any event, Section 23 applied only to contracts and not to proposed contracts. That apart, the condition for obtaining a license/NOC from the holder of copyright in the recordings which were to be played at the event could not be regarded as an illegal condition.

**53.** Defendant 2 has also relied on the proviso to Section 60 of the Copyright Act, to submit that the benefit of the provision would not be available to the plaintiff. It is pointed out that, as per the proviso,

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<sup>19</sup> **23. What considerations and objects are lawful, and what not.** – The consideration or object of an agreement is lawful, unless –  
it is forbidden by law; or  
is of such a nature that, if permitted, it would defeat the provisions of any law; or  
is fraudulent; or  
involves or implies injury to the person or property of another; or the Court regards it as immoral,  
or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful, is void.

Section 60 would not apply if the copyright holder were to institute a suit for infringement of copyright. Predicated on Section 60, two contentions are advanced by Defendant 2.

**54.** The first is that the proviso clearly indicates that Section 60 only applies to acts which have already taken place and not to proposed actions. If a suit could be filed for an action which was yet to take place, Defendant 2 submits that the proviso would be rendered otiose and nugatory, as the benefit of the proviso would be available only in respect to an act which had already taken place. It is submitted that the Section and the proviso are two sides of one coin, the benefit of the former being available to the person committing the alleged infringement and the benefit of the latter being available to the holder of the copyright which is allegedly infringed.

**55.** The second ground on which, by invoking the proviso, the applicability of Section 60 to the plaintiff is contested – which was canvassed more during oral arguments before the Bench than in the written submissions – is that, if the plaintiff were to be permitted to institute the present suit under Section 60, Defendants 1 to 3 would be rendered bereft of the benefit of the proviso, as they could not institute an infringement suit against the hotels, who had accepted the condition imposed by them, and could also not institute an infringement suit against the plaintiff as no act of infringement has as yet been committed by it. Even for this reason, it is submitted that, if the plaintiff were to be permitted to institute the present suit under Section 60, the plaintiff could walk off with a decree of non-infringement without extending, to the defendant, the benefit of the

proviso to Section 60, which would be contrary to the statutory scheme.

**56.** In fact, it is submitted that the proviso evidences the intent of Section 60 as being that the copyright holder should not merely hold out threats of infringement of copyright, but should, if it so desires, institute a suit for infringement. It is for this reason that, if the copyright holder merely contents itself by threatening the alleged infringer of copyright, a suit for protection against groundless threats can be instituted by the alleged infringer under Section 60, which would stand extinguished on an infringement suit being filed by the copyright holder.

**57.** For these reasons, too, therefore, it is contended that Section 60 applies only to the hotels, to whom Defendant 1 had held out the threat, and not to the plaintiff, and could not apply where the alleged infringement has yet to take place.

**58.** In the aforesaid context, Defendant 1 has cited several authorities on the point that, while interpreting a statute which contains a proviso, due meaning has also to be extended to the proviso and that the Section has to be read as a whole. These are, however, principles which are well settled, and it is not necessary to advert to the judgments cited in that regard.

**59.** Dealing, next, with Section 34 of the Specific Relief Act, Defendant 2, in its written submissions, submits that the plaintiff, in order to maintain the present suit under Section 34, would have to demonstrate that it was entitled to a legal character, which was being denied to it by the defendants. Legal character refers to the legal

status of a person, and not the legal character of an act. The declaration that was being sought in the present case was not *qua* the status of the plaintiff, but the status of the act that the plaintiff intended to commit. Such a suit, if it is submitted, could not be maintained under Section 34 of the Specific Relief Act. Reliance has also been placed, in this context, on *A.C. Muthiah v. B.C.C.I.*<sup>20</sup>, which holds that groundless threat proceedings under the Copyright Act and under the Patent Act are exceptions to Section 34 of the Specific Relief Act.

**60.** It is further contended that Section 52(1)(za) of the Copyright Act operates not as a sword but as a shield. In other words, if the provision applies, the copyright holder would not be able to institute a suit for infringement and, in the event any such suit is instituted, the alleged infringer would be entitled to the protection of the provision. A suit in advance of any act being committed, invoking Section 52(1)(za) cannot, therefore, be filed.

**61.** Even otherwise, submits Defendant 2, the plaintiff could not have sought a restraint against hotels imposing a condition of obtaining a license for playing music at their premises. The imposition of such a condition fell within the realm of freedom of contract, with which the Court could not legitimately interfere.

**62.** Defendant 2 also refers to the specific words contained in Section 52(1)(za) to dispute the maintainability of the present suit. It is pointed out that the explanation to Section 52(1)(za) of the Copyright Act refers to “a marriage procession and other social

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<sup>20</sup> (2011) 6 SCC 617

festivities associated with the marriage”. It is pointed out that the plaintiff has not alleged, anywhere, that it was being asked to obtain any NOC/license for a marriage procession. The grievance of the plaintiff was, therefore, restricted to the requirement of obtaining an NOC/license for social festivities associated with the marriage. These words, read in conjunction with the expression “*bona fide*”, contained in the main part of Section 52(1)(za), it is submitted, rendered the dispute entirely one of fact. In other words, it would have to be determined, in each case, whether the function in question was a *bona fide* social festivity associated with marriage. An abstract declaration, without any facts relating to the function which was to take place could not, therefore, be sought either under Section 60 of the Copyright Act or under Section 34 of the Specific Relief Act.

**63.** In effect, it is submitted, what is being sought, is a declaration regarding the legal position which already stands clearly set out in the statute. Section 52(1)(za), read with the explanation thereto, clearly ordains that marriage processions and other social festivities associated with the marriage, if *bona fide*, would not require a license from the copyright holder of songs or other recordings which were played therein. There could, therefore, be no suit to merely declare this statutory legal position. If a suit was, therefore, being filed for a declaration, it would have to be with respect to specific events. In this context, Defendant 2 also points out that prayer (d) in the suit sought an injunctive order of restraint, against the defendants seeking NOCs/licenses in respect of events covered by Section 52(1)(za), without identifying the events. Such a prayer, it is submitted, could not be maintained.

**64.** Defendant 2, in its written submissions, also reiterates the contention that the suit would not lie in view of Order I Rule 3 of the CPC, as the provision required the right to relief in a suit instituted against several defendants to arise out of the same act or transaction or series of transactions. In the present case, it is submitted that the acts/transactions with which the plaintiff was aggrieved were independent of each other. They could not, therefore, be combined in one suit.

Written statement by Defendant 3

**65.** Defendant 3, in its written statement, submits that the plaint is completely devoid of any sustainable cause of action. Defendant 3 does not dispute the entitlement, of the plaintiff, to the benefit of Section 52(1)(za) of the Copyright Act. Essentially according to the written statement, the requirement of obtaining an NOC/license from Defendant 3 is only to verify the entitlement of the plaintiff to the benefit of Section 52(1)(za). It is for this reason, it is submitted, that Defendant 3 grants such licenses/NOCs free of costs. No royalty or license fee is charged for such events.

**66.** Defendant 3 also contests the applicability, to the facts of the present case, of Section 60 of the Copyright Act. It is alleged that the suit is predicated on an illusory cause of action, where none exists. There is no communication from any of the Defendants 1 to 3 to the plaintiff, which threatens the plaintiff with any proceedings for copyright infringement. The invocation of Section 60 of the Copyright Act is, therefore, according to Defendant 3, completely lacking in *bona fides*. Defendant 3 further submits that, in its

licensing forms, it has now included a note which clarifies that it does not charge any royalty or license fees for any event or function “declared as a marriage procession or social festivity associated with the marriage as per law” and that, for the purposes of verifying such claims, free of costs license was issued by Defendant 3. For obtaining such a free of cost license, it is submitted that the applicant is merely required to provide Defendant 3 with evidence to show that the event is a marriage related function, such as an invitation card or a letter from the entity which holds or operates the venue where the event is proposed to be held, declaring that the booking is made for a marriage related function.

**67.** The remaining submissions advanced by Defendant 3 are similar to those advanced by Defendants 1 and 2 in their written submissions and do not, therefore, merit repetition.

Replications and written submissions of plaintiff

Replication to written statement of Defendant 1 Novex

**68.** The plaintiff has, in its replication to the written statement of Defendant 1 Novex, submitted that the words “social festivities associated with marriage”, as contained in the Explanation to Section 52(1)(za) are required to be interpreted in an expansive, and not restrictive, fashion. All events surrounding the procession of marriage and other social festivities associated with the marriage would, in the submission of the plaintiff, be included therein.



**69.** On the aspect of maintainability, the plaintiff submits that the CPC entitles the plaintiff to join or unite, in one suit, several causes of action against the same defendant or defendants jointly, particularly if the causes of action arise from the same bundle of facts. In fact, submits the plaintiff, Order II Rule 2<sup>21</sup> of the CPC requires the plaintiff to raise all such claims in one suit. The cause of action, in the present plaint, arises from the allegedly unreasonable and illegal demands of Defendant 1 to 3 and their alleged acts of coercing the plaintiff to procure NOCs for playing recordings, in which they hold copyright, in events relating to weddings and marriage ceremonies, despite the exception statutorily provided in the Explanation to Section 52(1)(za) of the Copyright Act. The plaintiff is, in the circumstances, well within its rights to institute one suit against all the defendants.

**70.** The replication further alleges that, in the event of failure, on the part of the plaintiff, to pay the demanded license fee to Novex, there was every possibility of Novex obstructing peaceful conducting of the wedding functions. This, therefore, placed the plaintiff in a situation in which it had no option but to succumb to the illegal demands of Novex. The plaintiff has sought to draw attention to the fact that another event management company, Rashi Entertainment

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<sup>21</sup> 2. **Suit to include the whole claim.** –

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) *Relinquishment of part of claim.* – Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs.* – A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

*Explanation.* – For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Pvt Ltd was, in fact, coerced into paying a huge amount to an official of Novex, for not obtaining a license. The documents relating to this transaction have also been placed on record with the plaintiff.

**71.** The replication further asserts that the *bona fides* of the wedding ceremonies being conducted by the plaintiff are not in doubt. In fact, asserts the replication, the plaintiff has placed, on record, the documents relating to the wedding ceremonies conducted by it, which establishes its *bona fides*. The amount charged by the plaintiff from its clients is also, submits the plaintiff, irrelevant to the present dispute. The fact that the plaintiff had, in the past, obtained a license from Novex, too, according to the plaintiff, is of no relevance, as the licence was obtained under coercion and duress.

**72.** The replication further alleges that the demand, of Novex, to be paid licence fees, or to obtain an NOC, before playing sound recordings in which it holds copyright, is against the law of the land, as it is in clear violation of Section 52(1)(za) of the Copyright Act.

#### Replication to written statement of Defendant 2 PPL

**73.** The submissions of the plaintiff in the replication filed by way of response to the written statement of Defendant 2 PPL are largely similar to the submissions contained in the replication filed to the written statement of Defendant 1 Novex. On the aspect of maintainability, it is averred, in para 20 of the replication, that the plaintiff was entitled to institute a single suit against the defendants as the “right to relief arises out of the same act or transaction or series of transactions, i.e., organising and hosting marriages scheduled between

12.01.2021 to 15.01.2021 and related religious and social festivities”. “Thus”, it is contended, “the Defendants in present suit are joined together in one single suit for completeness of understanding the questions of fact and law before this Hon’ble Court”.

Replication to written statement of Defendant 3 IPRS

**74.** Para 1 of the replication filed by the plaintiff to the written statement of IPRS states that the plaintiff has filed the present suit “on account of the continuous and illegal conduct of Defendants therein coercing the plaintiff and fixing it to seek licenses for public performances of sound recordings played during marriage ceremonies, in clear violation of the law laid down under Section 52(1)(za) of the Copyright Act, 1957 as well as on account of groundless proceedings by the Defendant No. 1 against the Plaintiff in furtherance of such illegal demands”.

**75.** It is further asserted by the plaintiff that the demand, by Defendant 3, of a license being obtained from it prior to playing of any recordings in which Defendant 3 holds copyright in any marriage procession or festivities associated therewith, is in the teeth of Section 52(1)(za) of the Copyright Act and, therefore, hinders the plaintiff’s right to carry on business as guaranteed by Article 19(1)(g) of the Constitution of India.

**76.** It is further submitted that, at this stage, the Court is not required to consider whether any particular event that the plaintiff proposes to conduct would, or would not, fall within the scope of Section 52(1)(za) read with the Explanation thereto. The imposition of

a wholesale prohibition, by Defendant 3, of its recordings being placed in any wedding ceremony without a license/NOC being first obtained from it is, it is submitted, *ex facie* illegal, thereby entitling the plaintiff to maintain the present suit.

Written submissions by plaintiff

**77.** The plaintiff has, in its written submissions, asserted that the actions assailed in the plaint are (i) threats, held out by Defendants 1 to 3 to hotels, requiring them to mandate the plaintiff to take a license/NOC from them before playing recordings in which they hold copyright in any wedding ceremonies and (ii) the consequent actions by the hotels, disallowing the plaintiff to use or play music owned or controlled by Defendants 1 to 3 in weddings or festivities associated with weddings without obtaining such licenses/NOCs. For this purpose, the plaintiff has adverted to the documents already cited in the various sub paras of paras 20 to 24 *supra*.

**78.** The plaintiff, therefore, submits that it is seeking a declaration that it is not required to take licenses for playing or using music recordings owned/controlled by Defendants 1 to 3 in the course of wedding or social festivities associated with weddings.

**79.** Apropos maintainability, the plaintiff submits that Section 34 of the Specific Relief Act is couched in wide and compendious terms and would embrace a suit such as the present. The plaintiff has relied, for this purpose, on para 15 of the decision of the Supreme Court in *Supreme General Films Exchange v. Maharaja Brij Nath Singh Ji*

*Deo*<sup>22</sup> and paras 68 and 114 of the decision of this Court in *Gene Tech Inc. v. Drugs Controller General Of India*<sup>23</sup>.

**80.** Apart from Section 34 of the Specific Relief Act, the plaintiff contends that the present suit would also lie under Section 60 of the Copyright Act, as the plaintiff is entitled to be regarded as a “person aggrieved” within the meaning of the said provision. It is submitted that, for a person to be aggrieved under Section 60, it is not necessary that the threat, against which the suit is instituted, must have been held out against such person. Even if the threat is held out against a third person, any person aggrieved by such threat, which would include any person whose business is affected by such threat, could maintain a suit seeking a declaration that the threat was groundless. In this context, the plaintiff has relied on (i) paras 27 and 28 of *Bar Council of Maharashtra v. M.V Dabholkar*<sup>24</sup>, for the proposition that the words “person aggrieved” are to be broadly interpreted and (ii) para 20 of *Samir Agrawal v. Competition Commission of India*<sup>25</sup>, for the proposition that the interpretation of the expression “person aggrieved” would depend on various factors, and no rigid, exact or comprehensive meaning can be attributed to the phrase. It is asserted that the plaintiff’s grievance is not only for the plaintiff, whose right to carry on business is impeded by the defendants’ acts, but also on behalf of those persons who engaged the plaintiff for conducting wedding ceremonies.

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<sup>22</sup> (1975) 2 SCC 530

<sup>23</sup> 2016 (66) PTC 554

<sup>24</sup> (1975) 2 SCC 702

<sup>25</sup> (2021) 3 SCC 136

**81.** The written submissions further contend, on the basis of para 12 of *Prem Lala Nahata v. Chandi Prasad Sikaria*<sup>26</sup>, that misjoinder of parties does not vitiate a suit.

**82.** The plaintiff has also relied on Order I Rule 8 of the CPC, to contend that the suit was maintainable against all the defendants.

**83.** It is further contended that Defendants 1 to 3 are the actual and necessary proper parties to the suit, against whom the principal grievance of the plaintiff is directed. The impleadment of the hotels has, according to the plaintiff, been necessitated because the hotels are adopting the path of least resistance, and for any declaration as sought by the plaintiff to be effective, the hotels have to be impleaded as parties.

**84.** The plaintiff has also relied on paras 9 to 11 of *Ganga Ram Hospital Trust v. MCD*<sup>27</sup>, to contend that, absent any statutory bar, the right to file a suit is inherent in every citizen.

#### **Rival arguments at the bar**

**85.** In order to avoid repetition, reference to submissions already advanced at the Bar by learned Counsel, which already stand captured in the reference to the written submissions filed by the parties, earlier in this judgment, would be eschewed.

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<sup>26</sup> (2007) 2SCC 551

<sup>27</sup> (2001) 60 DRJ 549 (DB)

**86.** Mr. Abhishek Malhotra, learned Counsel, commenced arguments on behalf of the plaintiff. He clarified that the plaintiff was not limiting its right to claim the reliefs in the suit to Section 60 of the Copyright Act. Even assuming he were, submits Mr Malhotra, the words “any person aggrieved thereby”, in Section 60, were wide enough to embrace the plaintiff. He draws attention to the distinction between the words “any other person” and “any person aggrieved thereby”, both of which find place in Section 60. He points out that the use of the word “any person aggrieved thereby”, instead of “such person”, indicates the intent of the legislature to confer a wide expanse to the provision, to embrace any person who was prejudicially affected by the threat.

**87.** Moreover, submits Mr. Malhotra, the communication dated 14<sup>th</sup> December 2020 from Defendant 1 to Marriott also alleged that, in the event of the recordings, in which Defendant 1 held copyright, being played at wedding ceremonies by the plaintiff, the plaintiff would also be liable for copyright infringement. Further, Mr. Malhotra points out that the insistence of the hotels that the plaintiff should obtain a license from the copyright holder of the recordings impacted the plaintiff commercially, thereby rendering the plaintiff a “person aggrieved” within the meaning of Section 60 of the Copyright Act.

**88.** Mr. Malhotra submits that, in view of Section 52(1)(za) of the Copyright Act, unless the defendants were able to show that the plaintiff was, in the garb of wedding festivities, hosting some other event, the plaintiff was entitled to an injunction as sought. In this context, Mr. Malhotra has placed reliance on para 31 of the judgment

of a Division Bench of this Court in *University of Oxford v. Rameshwari Photocopy Services*<sup>28</sup>.

**89.** Responding to Mr. Malhotra, Mr. Chander M Lall, learned Senior Counsel appearing for Defendant 1 initially drew attention to the meaning of “copyright”, and the persons who could infringe copyright, as set out in Section 14 of the Copyright Act. He submits that, under Section 14(e)(iii)<sup>29</sup>, Defendants 1 to 3 had exclusive right to communicate, to the public, the recordings in which they held copyright. Under Section 51, any person other than Defendants 1 to 3, who communicated the said recordings to the public without obtaining a license from the concerned copyright holder-defendant was, *ipso facto*, an infringer. In the present case, in fact, the primary infringer would be the DJ, under Section 51(a)(i) and the hotels under Section 51(a)(ii). As such, Defendants 1 to 3 would be able to initiate infringement proceedings, if at all, only against the DJ or the hotels.

**90.** Mr. Lall submits that, *de hors* the alleged threat held out by Defendants 1 to 3 to the hotels, the plaintiff can have no independent right against the hotel, as the hotel is a private space. The mere fact that, as a result of the insistence of the hotels that the plaintiff obtain a licence/NOC from Defendants 1 to 3, the plaintiff would have to suffer expense, he submits, cannot render the plaintiff a “person aggrieved”, within the meaning of Section 60 of the Copyright Act.

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<sup>28</sup> 235 (2016) DLT 409 (DB)

<sup>29</sup> 14. **Meaning of copyright.** – For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely :—

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(e) in the case of a sound recording, –

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(iii) to communicate the sound recording to the public.



The grievance of the “person aggrieved” has, in his submission, to be proximate to the copyright asserted by the copyright holders.

**91.** Mr. Lall submits that a joint suit cannot be maintained against Defendants 1 to 3, as the cause of action and the grievance of the plaintiff, *vis-à-vis* each of the said defendants, is distinct and different. Similarly, Mr. Lall seriously objects to the inclusion of the FHRAI as a defendant in the present proceedings. By including the FHRAI as a defendant, Mr. Lall submits that the plaintiff cannot seek to obtain an omnibus declaration covering all hotels in the country.

**92.** Drawing attention to para 2 of the plaint, Mr. Lall submits that the grievance of the plaintiff is founded on a mere apprehension. Such a suit, he submits, cannot be maintained. Apropos the prayers in the suit, Mr. Lall submits that prayer (a) travels far beyond the peripheries of the Copyright Act. He submits that the Copyright Act does not permit the issuance of a declaration by the Court that a particular act would not amount to infringement of copyright, which is precisely what prayer (a) seeks. Apropos prayer (b), Mr. Lall submits that Section 52 cannot be used as a sword, to constitute the basis to seek a declaration, and is only intended to be a defence against an infringement suit.

**93.** What is the plaintiff is seeking, submits Mr. Lall, is in a sense an *in rem* order. Granting such an order, as sought by the plaintiff, would stretch Section 60 beyond acceptable limits. Prayer (d) in the suit, which seeks a restraint against the defendants requiring the plaintiff to seek a license/NOC from Defendants 1 to 3 for marriage processions and ceremonies associated with marriages and for a

direction that any notice or communication which requires such a license to be taken is illegal, submits Mr. Lall, is much beyond what Section 60 permits.

**94.** Adjudicating on the prayers in the suit, submits Mr. Lall, would require the Court to define the expression “social festivities associated with marriage”. The act, he submits, would require examination of the case on event to event basis, and no omnibus ruling can be sought.

**95.** Mr. Lall has drawn especial attention to para 14 of the plaint, which reads as under:

“14. Recently, the Plaintiff has been harassed by the illegal conduct of Defendants 1 to 3, who have instructed Defendant Nos 4 to 8, and presumably, other hotel members of Defendant No 9, to obtain and submit No-Objection Certificates (NOCs) from Defendant Nos. 1 to 3 for any sound recordings played by the Plaintiff during the wedding at the hotel venues owned/operated by Defendant No. 4 to 8, despite being informed that such usage is “fair dealing” in terms of the provisions of the Act and is expressly excluded from the definition of infringing acts by virtue of Section 52(1)(za) thereof.”

Mr. Lall submits that para 14 of the plaint is, in fact, the whole basis of the suit. He submits that the plaintiff cannot seek any injunction against the hotels Defendants 4 to 8 from accepting the condition placed by Defendants 1 to 3, if any, or disallowing usage of their premises by the plaintiff without obtaining a license from the said defendants. In fact, submits Mr. Lall, the Public Notice dated 27<sup>th</sup> August 2019 issued by the Copyright Office already stands quashed by the High Court of Punjab and Haryana in *Novex Communications Private Limited v. UOI*<sup>30</sup>. The sequitur is, therefore, that the plaintiff would have to obtain a license from Defendants 1 to 3 to play recordings in which they hold copyright.

**96.** What, in effect, the plaintiff is seeking, submits Mr. Lall, is a declaration in terms of Section 105 of the Patents Act, without any parallel provision existing in the Copyright Act. The provision in the Patents Act which parallels Section 60 of the Copyright Act, he points out, is not Section 105, but Section 106<sup>31</sup>.

**97.** In support of his submissions, Mr. Lall has placed reliance on Paras 8, 9, 11, 16, 31 and 33 to 35 of the judgment of a Division Bench of this Court in *Ajay Industrial Corporation v. Shiro Kanao of Ibaraki City*<sup>32</sup>.

**98.** Mr. Lall submits that the expression “any person aggrieved thereby”, in Section 60, must necessarily refer to an infringer. A person who is not an infringer, he submits, cannot claim to be aggrieved within the meaning of Section 60 merely because of financial difficulties suffered on account of the insistence, by the copyright holders, to obtain a license from them before playing the recordings in which they hold copyright. Else, he submits, even the bride and the groom, and the persons who are paying for the marriage ceremonies, would become “persons aggrieved” within the meaning

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<sup>30</sup> 2022 SCC OnLine P&H 1105

<sup>31</sup> 106. **Power of Court to grant relief in cases of groundless threats of infringement proceedings.**—  
(1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) threatens any other person by circulars or advertisements or by communications, oral or in writing addressed to that or any other person, with proceedings for infringement of a patent, any person aggrieved thereby may bring a suit against him praying for the following reliefs, that is to say –

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) such damages, if any, as he has sustained thereby.

(2) Unless in such suit the defendant proves that the acts in respect of which the proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the court may grant to the plaintiff all or any of the reliefs prayed for.

*Explanation.*—A mere notification of the existence of a patent does not constitute a threat of proceeding within the meaning of this section.

<sup>32</sup> AIR 1983 Del 496

of Section 60. He has placed reliance, in this context, on paras 7, 8, 10 and 11 from the judgment of the Supreme Court in *Adi Pherozechah Gandhi v. H.M. Seervai*<sup>33</sup> and on paras 28 to 33 from the decision in *Hardie Trading Ltd v. Addisons Paint & Chemicals Ltd*<sup>34</sup>.

**99.** Mr. Lall submits that Section 60 could be invoked by the hotels, for a declaration that the threats held out to them by the copyright owners are groundless, at best till the copyright owners institute an infringement suit. The plaintiff, in any event, cannot claim to be a “person aggrieved”. He has relied, in this context, on para 29 of the judgment of the Supreme Court in *Infosys Technologies Ltd v. Jupiter Infosys Ltd*<sup>35</sup>. The plaintiff, he submits, cannot have a cause of action against Defendants 1 to 3, arising out of the threats, if any, held out by them to hotels. He draws attention, once again, in this context, to the fact that the Copyright Act does not contain any provision parallel to Section 105 of the Patents Act. The right to remedy, therefore, has to be sought within the four corners of Section 60 of the Copyright Act.

**100.** Mr. Lall submits that it would be impermissible for the plaintiff to invoke Section 34 of the Specific Relief Act *de hors* the Copyright Act. Besides, he submits that Section 34 can be invoked “against any person denying or interested to deny”, the title of the plaintiff. Defendant 1, he submits, is not denying, or interested to deny, any title of the plaintiff. Mr. Lall submits that, by seeking recourse to Section 34 of the Specific Relief Act, a plaintiff cannot indirectly seek

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<sup>33</sup> (1970) 2 SCC 484

<sup>34</sup> (2003) 11 SCC 92

<sup>35</sup> (2011) 1 SCC 125

relief in copyright parallel to Section 105 of the Patents Act, when the legislature has consciously omitted to include, in the Copyright Act, any such parallel provision.

**101.** Section 52 of the Copyright Act, submits Mr. Lall, does not confer any enforceable substantive right. Its provisions are intended to be used as defences against any claim of copyright infringement. Mr. Lall relies, for this purpose, on para 110 of the judgment of the Supreme Court in *K.T. Plantation Pvt Ltd v. State of Karnataka*<sup>36</sup> and para 29 and 66 of the judgment of this Court in *Warner Bros Entertainment v. Santosh V.G.*<sup>37</sup>

**102.** A judicial decision, submits Mr. Lall, has to be rendered on facts which are before the Court. The Court cannot pass a broad judgment which would operate in an omnibus fashion. Grant of the reliefs sought in the plaint, he submits, would result in extinction, from the requirement of obtaining a license from the copyright holder, of recordings which are proposed to be played, applicable to all social festivities connected with every marriage. Can, questions Mr. Lall, such an omnibus order be passed at all?

**103.** Emphasising the contention that the suit is barred by Order I Rule 3 and Order II Rule 3 of the CPC, Mr. Lall points out the following:

- (i) The copyrights held by Defendant 1 have nothing to do with the copyrights held by Defendant 2 and Defendant 3.

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<sup>36</sup> (2011) 9 SCC 1

<sup>37</sup> MANU/DE/0406/2009

(ii) The threat, if any, has been held out only by Defendant 1 to Marriott. No threat, of any kind, has been held out by Defendants 2 or 3.

(iii) The copyright of Defendant 3 is not in the sound recordings, but in the underlying works.

(iv) There is, therefore, no joint cause of action, which would envelop all the 3 Defendants 1 to 3. Distinct causes of action, qua different defendants, cannot be combined in one suit.

(v) The conjunction “and”, between clauses (a) and (b) of Order I Rule 3 of the CPC indicates that both clauses have to be cumulatively satisfied.

(vi) Clause (a) was clearly not applicable to the present case.

(vii) The words “save as otherwise provided” in Order II Rule 3 accorded predominance to Order I Rule 3, over Order II Rule 3.

(viii) Order II Rule 3 permitted joinder of multiple courses of action in one suit only where all courses of action applied to all defendants. Mr. Lall cited, in this context, *Shiv Narayan*<sup>12</sup>, particularly emphasising paras 2.4, 2.5 and 30 thereof.

**104.** Relying, finally, on *Super Cassettes Industries Ltd v. Chintamani Rao*<sup>38</sup>, Mr. Lall submits that the reliefs sought by the plaintiff are far too omnibus in terms, to be granted by the Court.

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<sup>38</sup> MANU/DE/4400/2011

**105.** Arguing on behalf of Defendant 3 IPRS, Mr. Vivek Chib, learned Senior Counsel, questioned the existence of any enforceable legal right in favour of the plaintiff. Grant of any injunction, as sought by the plaintiff, he submits, would do violence to the Copyright Act. Section 60 of the Copyright Act, he submits, is unique *vis-à-vis* the declaratory relief envisaged thereunder. The provision only envisages a declaration *vis-à-vis* threats held out, and not with respect to proprietary rights, damages or injunctions against future threats.

**106.** Insofar as Section 34 of the Specific Relief Act is concerned, Mr. Chib submits that the provision, in order for it to apply, requires the existence of a legal status in the plaintiff, in the form of a right over property, which is being infringed by the defendant. Outside Section 34 of the Specific Relief Act, Mr. Chib submits that relief can be claimed only under Order VII Rule 7 or Section 9 of the CPC. Neither of these provisions would apply, as there is no property involved in the present case. There being no underlying rights in favour of the plaintiff, Mr. Chib submits that the suit itself is not maintainable and relies, for the purpose, on *Agriculture Produce Market Committee v. Girdharbhai Ramjibhai Chhayinara*<sup>39</sup> and *Veruareddi Ramaraghava Reddy v. Konduru Seshu Reddy*<sup>40</sup>.

**107.** Section 60 of the Copyright Act, submits Mr. Chib, relates only to past acts of infringement. He cites, for this purpose, *Mohd Abdul Khader v. Finlay, Fleming & Co.*<sup>41</sup>

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<sup>39</sup> (1997) 5 SCC 468

<sup>40</sup> AIR 1967 SC 436

<sup>41</sup> AIR 1928 Rangoon 256

**108.** Taking over from Mr. Chib and arguing on behalf of Defendant 3, Mr. Amit Sibal, learned Senior Counsel submits that, once the hotels had accepted the request of Defendant 1 and included, in their contract with event management companies, the condition of obtaining a license from the copyright holder in the recordings which were proposed to be played, the possibility of infringement stood wiped out. No cause of action, on the basis of any perceived threat could, therefore, survive thereafter. Mr. Sibal submits that Section 60 of the Copyright Act was never intended to operate as a provision whereunder a potential future infringement suit could be preemptively defeated. In fact, the proviso to Section 60 made it clear that, on the filing of an infringement suit, the Section 60 proceedings stood *ipso facto* extinguished. Mr. Sibal cites, in support of his submissions, paras 6 and 7 of *Zee Entertainment Enterprises v. Saregama India Ltd*<sup>42</sup>, para 6 of the judgment of the High Court of Bombay in *Music India v. Super Cassettes Industrial Pvt Ltd*<sup>43</sup> and para 2 of the decision of a learned Single Judge of this Court in *The Chartered Institute of Taxation v. Institute of Chartered Tax Advisors of India Ltd*<sup>44</sup>. In any event, submits Mr. Sibal, the plaintiff can have no legitimate cause of action against his client.

**109.** Mr. Sibal echoes the reliance, placed by Mr. Lall, on the proviso to Section 60 and cites paras 43 and 44 of *S. Sundaram Pillai v. V.R. Pattabiraman*<sup>45</sup> and *Dwarka Das Prasad v. Dwarka Das Saraf*<sup>46</sup>, on the legal effect of a proviso. He submits that Section 60

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<sup>42</sup> 2017 (70) PTC 209

<sup>43</sup> 1987 (7) PTC 83 (Bom)

<sup>44</sup> 2019 (80) PTC 378 (Del)

<sup>45</sup> (1985) 1 SCC 591

<sup>46</sup> (1976) 1 SCC 128



cannot be interpreted in such a way as to completely disable the proviso, or as would render the proviso otiose. He further cites, in this regard, para 11 of *Gauri Shankar Gaur v. State of U.P.*<sup>47</sup> and para 23 and 25 of *Delhi Airport Metro Express Pvt Ltd v. Delhi Metro Rail Corporation*<sup>48</sup>. Additionally citing, for the purpose, para 66 and 67 of *Renaissance Hotel Holdings Inc. v. B. Vijaya Sai*<sup>49</sup>, Mr. Sibal submits that a statute is to be interpreted as a whole, with its individual provisions interpreted in context.

**110.** The grievance of the plaintiff, submits Mr. Sibal, is essentially against the precondition incorporated by the hotels in their contracts with the plaintiff, requiring the plaintiff to obtain a license, or NOC, from the copyright holders of the recordings which the plaintiff proposes to play in wedding ceremonies to be conducted in their premises. The plaintiff cannot, thereby, he submits, claim to be a “person aggrieved” within the meaning of Section 60 of the CPC. What the plaintiff is seeking is a direction to the defendant hotels to modify the terms of their contract with the plaintiff. Such a relief, he submits, cannot be sought either under Section 60 of the Copyright Act or Section 34 of the Specific Relief Act.

**111.** Adverting specifically to Section 34 of the Specific Relief Act, Mr. Sibal submits that the provision applies only where the “legal character” of a person is in jeopardy. The expression “legal character”, he submits, denotes the legal status of the person. In order to justifiably invoke Section 34, therefore, the plaintiff would have to demonstrate a threat to its legal status, and not to the legal character of

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<sup>47</sup> (1994) 1 SCC 92

<sup>48</sup> (2022) 9 SCC 286

<sup>49</sup> (2022) 5 SCC 1

the act that the plaintiff proposes to commit. The declaration sought in the present suit is not in respect of the legal character of the plaintiff, but of the legal character of the act of playing the recordings in which Defendants 1 to 3 hold copyright, to the effect that, by so playing the recordings, no act of copyright infringement would be committed. That, submits Mr. Sibal, would not amount to a declaration regarding the legal status or the legal character of the plaintiff. He cites, in this regard, para 11 of the judgment of this Court in *Gurudwara Parbandhak Committee v. Jagmohan Singh*<sup>50</sup>, para 21 of the judgment of the High Court of Allahabad in *Bhoop Singh v. Tarif Singh*<sup>51</sup> and paras 30, 44, 45 and 49 of the judgment of the High Court of Bombay in *Major General Shanta Shamsher Jung Bahadur Rana v. Kamani Brothers Private Limited*<sup>52</sup>. No legal character of the plaintiff being involved, Mr. Sibal submits that Section 34 of the Specific Relief Act would not apply.

**112.** Mr. Sibal submits that the cause of action of the plaint is to be understood in the light of the relief sought. The relief sought in the present plaint, he submits, is tautological, for a declaration that an act, already declared by the Copyright Act to be non-infringing, is in fact not infringing. The cause of action, he submits, has to be event specific, and not abstract.

**113.** Mr. Sibal next adverts to the prayers in the present application. Prayer (a), he submits, seeks a restraint against the defendants from requiring the plaintiff to obtain a license/NOC from Defendants 1 to 3 “for marriage processions and ceremonies associated with marriage

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<sup>50</sup> 1971 SCC OnLine Del 144

<sup>51</sup> AIR 1952 All 392

<sup>52</sup> AIR 1959 Bom 201

is”, pending adjudication of the suit. Mr. Sibal submits that the prayer is completely abstract in its terms, and does not disclose either the nature of the marriage procession or of the marriage ceremony, in connection with which interlocutory injunction is sought. There is, he submits, neither any averment nor any material to indicate that the plaintiff was being required to obtain a license for a marriage procession. Insofar as the prayer with reference to “ceremonies associated with marriages” is concerned, Mr. Sibal submits that the Explanation to Section 52(1)(za) refers to “social festivities associated with the marriage”. The nature of the “ceremonies”, in respect of which injunction is sought is also not disclosed. It is not possible, therefore, according to Mr. Sibal, to identify whether the said ceremonies would amount to “social festivities associated with the marriage”.

**114.** Similarly, submits Mr. Sibal, the benefit of Section 52(1)(za) is available only to *bona fide* social festivities associated with the marriage. Whether, in a particular case, the social festivities associated with the marriage are *bona fide*, or not, he submits, would depend on the facts of that particular case, and the event forming subject matter thereof.

**115.** Drawing the attention of the Court to each of the clauses of Section 52(1), Mr. Sibal submits that extravaganzas, intended to earn huge revenues for the plaintiff are not intended to be covered by Section 52(1)(za). He has also sought to draw sustenance, for this proposition, from para 71 of the decision in *Entertainment Network (India) Ltd v. Super Cassettes Industries Ltd*<sup>53</sup> and paras 1, 6 to 14,

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<sup>53</sup> (2008) 13 SCC 30

18 to 22 and 26 of the judgment in *Novex Communications*<sup>30</sup>, paras 17 H and I of *Bristol Myers Squibb Holdings*<sup>9</sup>, para 35 of *A.C. Muthaiah*<sup>20</sup> and para 53 of *Sundaram Pillai*<sup>45</sup>. Relying on the judgment of the High Court of Bombay in *Vishranti Rajkumari Dessai v. Administrative Tribunal*<sup>54</sup>, Mr. Sibal submits that an explanation to a statutory provision merely explains the provision, and cannot either expand or curtail its scope. In any case, he submits, citing *Shailesh Dhairyawan v. Mohan Balakrishnan Lulla*<sup>55</sup>, that Section 52(1)(za), as also the Explanation thereto, were required to be purposively construed.

**116.** Defendants 4 to 6 supported the plaintiff.

**117.** Drawing attention to the various clauses in Section 52(1) of the Copyright Act, Mr. Sanjeev Sindhwani, learned Senior Counsel for the FHRAI submits that, where the clause was intended to apply only to non-commercial ventures, it was specifically so stated, as in the case of clauses (ad), (k), (l), (n), (o) and (zb)<sup>56</sup> of Section 52 (1). The

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<sup>54</sup> (1998) 5 Bom CR 714

<sup>55</sup> (2016) 3 SCC 619

<sup>56</sup> 52. **Certain acts not to be infringement of copyright.** –

(1) The following acts shall not constitute an infringement of copyright, namely –

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(ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;

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(k) the causing of a recording to be heard in public by utilising it, -

(i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein; or

(ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;

(l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

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(n) the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work;

(o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-

Explanation to Section 52(1)(za) his, he submits, is required to be expansively construed, for which purpose he relies on *Controller of Estate Duty v. Kantilal Trikamlal*<sup>57</sup> and paras 3, 7, 8, 9 and 12 of *Govt of A.P. v. Corporation Bank*<sup>58</sup>.

**118.** On the aspect of maintainability of the suit, Mr. Sindhwani submits that Section 60 of the Copyright Act is not the sole repository of the right to claim a declaration, and that the Copyright Act does not oust the original civil jurisdiction of the Court. He cites, in support, paras 1, 6, 7 and 13 to 15 of *Supreme General Films Exchange*<sup>22</sup>, paras 30 and 69 of *Gene Tech*<sup>23</sup> and paras 9, 10, 12 and 14 of *Ganga Ram Hospital Trust*<sup>27</sup>.

**119.** Mr. Sindhwani submits that, even if it were to be assumed that the suit was not in accordance with Order I Rule 3 of the CPC, the consequence would only be that envisaged in Order I Rule 3A<sup>59</sup>. Mr. Sindhwani has also cited Order I Rule 10(2)<sup>60</sup> and Order II Rule 4<sup>61</sup>, to

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commercial public library for the use of the library if such book is not available for sale in India;

(zb) the adaptation, reproduction, issue of copies or communication to the public of any work in any accessible format, by –

(i) any person to facilitate persons with disability to access to works including sharing with any person with disability of such accessible format for private or personal use, educational purpose or research; or

(ii) any organisation working for the benefit of the persons with disabilities in case the normal format prevents the enjoyment of such works by such persons:

Provided that the copies of the works in such accessible format are made available to the persons with disabilities on a non-profit basis but to recover only the cost of production:

Provided further that the organisation shall ensure that the copies of works in such accessible format are used only by persons with disabilities and takes reasonable steps to prevent its entry into ordinary channels of business.

<sup>57</sup> (1976) 4 SCC 643

<sup>58</sup> (2007) 9 SCC 55

<sup>59</sup> 3-A. **Power to order separate trials where joinder of defendants may embarrass or delay trial.** – Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient in the interests of justice.

<sup>60</sup> (2) **Court may strike out or add parties.** – The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court

support the maintainability of the suit. He submits that it is nobody's case that necessary parties were not completed in the suit; the defendants only seeks to urge that unnecessary parties were impleaded. Impleading of unnecessary parties does not vitiate the suit, as held in paras 9 to 11 and 13 of *Prem Lala Nahata*<sup>66</sup>.

**120.** Mr. Sindhwani submits that Section 52(za) of the Copyright Act is event neutral and, at places, even venue neutral.

**121.** Apropos the defendant's contention that the plaintiff is essentially seeking modification of the contract between the hotels and the event managers, Mr. Sindhwani submits that Section 23 of the Contract Act, 1872 renders void or illegal contracts as well as contracts that are unreasonable as opposed to public policy. He relies, for this purpose, on paras 14, 31 and 34 of the judgment of the Supreme Court in *Apex Laboratories v. Deputy C.I.T.*<sup>62</sup>

**122.** Mr. Sindhwani submits that hotels had to perform include, in the contracts with the event management companies, the condition of obtaining NOC/license from the Copyright holders. He has invited attention, in this context, to paras 80 and 14 of the written statement filed by the FHRAI by way of response to the plaint:

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effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

<sup>61</sup>4. **Only certain claims to be joined for recovery of immovable property.** – No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except –

- (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;
- (b) claims for damages for breach of any contract under which the property or any part thereof is held; and
- (c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

<sup>62</sup> (2022) 7 SCC 98

**123.** In support of his submissions, Mr. Sindhwani places reliance on para 13, 14 and 28 of the judgment of this Court in *Audio Voice India Pvt Ltd v. Vivek Khanna*<sup>63</sup>. He also cites paras 5, 12 and 20 of the decision of a learned Single Judge of this Court in *Aishani Chandna Mehra v. Rajesh Chandna*<sup>64</sup> as well as the judgment of the Division Bench of this Court in the appeal preferred therefrom, in *Rajesh Chandna v. Aishani Chandna Mehra*<sup>65</sup>.

**124.** Arguing in rejoinder, Mr. Raj Shekhar Rao, learned Senior Counsel first addressed the preliminary objection to the maintainability of the suit, predicated on Order I Rule 3 of the CPC. He submits that the cause of action, for the plaintiff to file the present suit, was the letter dated 14<sup>th</sup> December 2020 from Defendant 1 Novex to Marriott, as well as the consequent email from Marriott, requiring all event management companies to obtain licenses/NOC from the Copyright holders of the recordings which would be played at such events. The sole and common question of law which arose for consideration was, therefore, according to him, whether such a license was required to be obtained by the plaintiff from the Copyright holders. Mr. Rao submits that Order I Rule 3(a) would be relevant only if the hotels were necessary parties to the litigation. According to Mr. Rao, the hotels are only proper parties. The entire cause of action emanates from the letter dated 14<sup>th</sup> December 2020, addressed by Novex to Marriott. Mr. Rao submits that what the plaintiff was essentially seeking was a declaration as to whether Defendant 1 Novex could thus threaten the hotels.

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<sup>63</sup> 2018 (169) DRJ 607

<sup>64</sup> 2019 SCC OnLine Del 6718

<sup>65</sup> 2019 SCC OnLine Del 7941

**125.** Mr. Rao submits that it would have been open to his client to file individual suits, with respect to each hotel, and thereafter have them consolidated. Equally, he submits that he could have filed a representative suit under Order I Rule 8 read with Order I Rule 8A of the CPC. In choosing, instead of these two more cumbersome and time-consuming proceedings, the more expeditious avenue of filing a single suit, Mr. Rao submits that his client cannot be said to have been infracted the law. If each contract were to be made subject matter of an individual suit, Mr. Rao submits, obviously rhetorically, that 50,000 suits may have had to be filed.

**126.** According to Mr. Rao, the proviso to Section 52(1)(za) is crystal clear. He submits that no one is questioning the *bona fides* of the events being conducted by the plaintiff. Every average wedding, he submits, has three to four ceremonies associated with it. The demands of Defendants 1 to 3, he submits, result in their undue enrichment without legal authority. To bring home his contention that, in such circumstances, the plaintiff is entitled to be treated as a “person aggrieved”, Mr. Rao relies on para 19 to 21 of the judgment of the Supreme Court in *Samir Agrawal*<sup>25</sup>

**127.** Mr. Rao exhorts the Court to rule on the controversy and lay it to rest, instead of proceeding on technicalities. He also relies, for this purpose, on Section 9 of the CPC, to contend that exclusion of the jurisdiction of a civil court is not to be readily inferred and cites, in this context, *Dhulabhai v. State of M.P.*<sup>66</sup> He submits that there is no question, in the present case, of the plaintiff seeking any modification of the contracts between the hotels and his client, as the hotels are

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<sup>66</sup> AIR 1969 SC 78



merely being ambivalent and acting out of fear of Novex, arising out of the abuse, by Novex, of the extant legal provisions.

## **Analysis**

### **I. Overall view**

**128.** It is necessary, at the outset, to appreciate the exact contours of the *lis* before the Court, in conspectus, in the backdrop of the facts averred in the plaint.

**129.** There is no averment, or evidence, of any kind of threat having been held out to the plaintiff, by any of the defendants, at any point of time.

**130.** The sole document, which holds out any kind of threat, is the letter dated 14<sup>th</sup> December 2020 from Defendant 1 Novex to Marriott. The relevant passages from the said letter stand extracted, *in extenso*, in para 20 *supra*. Para 3 of the said letter expresses the view that, if any hotel or other premises permits its venue to be used for communication, to the public, of work in which another person holds copyright, without a license from such person, it would constitute copyright infringement within the meaning of Section 51(a)(ii) of the Copyright Act. Para 4 cautions Marriott that, under Section 51(a), “it is not only the person playing the sound recording in his events/function who is liable to be prosecuted for infringement of copyright but also the person in charge of the venue (hotel/auditorium/banquet etc.) (who would be) equally liable for the infringement.” In this para, therefore, Novex has opined that, in the event of communication of copyrighted material to the public without

obtaining a license as aforementioned, copyright infringement would stand committed by the person playing the sound recording and by the hotels/auditorium/banquet etc. which functions as the venue therefore.

II. Section 51 – Plaintiff cannot be a copyright infringer

**131.** This, Mr. Lall submits, is the clear mandate of Section 51 of the Copyright Act, and I agree. The categories of persons who, under Section 51, could be copyright infringers, are, *sans* unnecessary details,

- (i) any person who does anything, the exclusive right to do which is vested in the owner of the copyright, without obtaining a license from such owner in that regard [Section 51(a)(i)],
- (ii) any person who permits, for profit, any place to be used for communication of such copyrighted work to the public, without obtaining a license from such owner in that regard [Section 51(a)(ii)],
- (iii) any person who makes for sale or hire, sells or lets for hire or displace or offers for sale or hire, any infringing copies of the copyrighted work [Section 51(b)(i)],
- (iv) any person who distributes, for trade or to an extent which would traditionally affect the copyright owner, the infringing work [Section 51(b)(ii)],
- (v) any person who, by way of trade exhibits the infringing work in public [Section 51(b)(iii)] and
- (vi) any person who imports any infringing copy of the work into India [Section 51(b)(iv)].

We are concerned, among these, only with the infringers at (i) and (ii). Category (i) covers persons who do anything, the exclusive right to do

which is, by the Copyright Act, conferred upon the owner of the copyright. In the case of the owner of recordings of songs, *vis-à-vis* their being played and communicated to the public in functions, the rights that vests in the copyright owner, under the Copyright Act, is, to the extent it is relevant for our purposes, the right to play and communicate the recordings to the public. Category (i), relating to Section 51(a)(i) would, therefore, relate to the person who, without license from the copyright owner, plays or communicates his recordings according to the public. Section 51(a)(ii), clearly, would cover, in the present case, the hotels or other venues where the festivities are being conducted, in which such recordings are played.

**132.** As Mr. Lall correctly submits, an event management company such as the plaintiff would not fall either within sub clause (i) or (ii) of Section 51(a) of the Copyright Act. Neither does the plaintiff do anything, with the recordings in which Defendants 1 to 3 hold copyright, the right to do which is vested on the said defendants by the Copyright Act, nor is the plaintiff the owner or person in control of the venue where these activities take place. The plaintiff could not, therefore, in any event, be a “copyright infringer” within the meaning of Section 51 of the Copyright Act.

### III. No threat held out to plaintiff

**133.** Obviously conscious of this legal position, the communication dated 14<sup>th</sup> December 2020 from Novex to Marriott, too, alleges that, in the event the recordings, in which Defendant 1 Novex holds copyright, are played in wedding ceremonies in the Marriott, the

person playing the sound recording, and Marriott, would both be liable for copyright infringement.

**134.** The letter proceeds, therefore, to forewarn Marriott that, if it were to permit the playing of such recordings without obtaining, in the first instance, non-exclusive public performance rights in sound recordings from Novex, it would amount to infringement of Novex's copyrights.

**135.** The letter dated 14<sup>th</sup> December 2020 does not, therefore, threaten the plaintiff, either directly or indirectly, with infringement proceedings or allege that, if in a wedding ceremony conducted at Marriott by the plaintiff, the recordings in which Novex holds copyright are played without a license from Novex, the plaintiff would be guilty of copyright infringement. The liability in that regard, as per the letter dated 14<sup>th</sup> December 2020, would clearly fall on Marriott or the person playing the sound recordings, and not on the plaintiff.

**136.** The contention, of the plaintiff, that the letter dated 14<sup>th</sup> December 2020 threatened, not only Marriott but also the plaintiff is, therefore, incorrect.

**IV.** Defendants 2 and 3 have not held out any threat whatsoever; no threat held out by the communications from the hotels either

**137.** As already noted, the letter dated 14<sup>th</sup> December 2020, from Novex to Marriott, is the only letter which holds out a threat. The relevant terms of the contracts, and the conditions stipulated by the hotels in their communications with the plaintiff for allowing the

plaintiff to conduct wedding ceremonies in their premises, no doubt require the plaintiff to obtain NOC/license from Defendants 1 to 3, but they hold out no threat. The requirement of obtaining a license/NOC from Defendants 1 to 3 is, as the defendant's correctly contend, merely a contractual stipulation. It is not a threat.

**138.** Least of all can such a contractual stipulation be regarded as a threat within the meaning of Section 60 of the Copyright Act.

V. Section 60 of the Copyright Act – Comparison with Sections 105 and 106, Patents Act – Section 60 applicable only to acts of infringement already committed – “Any person aggrieved thereby”

**139.** That said, let us examine whether the threat held out by the letter dated 14<sup>th</sup> December 2020, to Marriott, is the kind of threat which is covered by Section 60 of the Copyright Act. The exact words used in Section 60 of prime significance, in this context.

**140.** Section 60 envisages the copyright owner threatening “any other person with any legal proceedings of liability in respect of the alleged infringement of copyright”. Plainly read, what is contemplated, in these words, is a threat that, in respect of an act which, according to the copyright owner, constitutes copyright infringement, legal proceedings or liability would follow. There can ordinarily be no allegation of infringement of copyright in respect of an act which is yet to take place. Ergo, the opening words of Section 60 themselves indicate that they refer to alleged infringement of copyright which has already occurred, and envisage the copyright owner threatening the alleged infringer with legal proceedings in that regard.

**141.** That this is the correct interpretation becomes apparent from the words that follow in Section 60. The provision goes on to state that, where such a threat is held out, any person aggrieved by the threat may institute a declaratory suit that “the alleged infringement, to which the threats related, *was not* in fact an infringement” of any legal rights of the person making the threats. The use of the past tense “was not” indicates, unmistakably, that the allegation of infringement is in respect of an act which has already taken place. Section 60 allows the person, to whom the threats are held out, to institute a declaratory suit that the alleged infringement, to which the threats related, was, in fact, not an infringement. What is clearly envisaged is, therefore, sequentially, that (i) an act stands committed by Person A, (ii) Person B alleges that, by committing such act, Person A has infringed his copyright, and (iii) Person B, therefore, threatens Person A with legal proceedings or liability in respect of such alleged infringement of copyright, whereupon (iv) Person A he is entitled to institute a declaratory suit, for declaration that the act committed *was not* an infringement of copyright.

**142.** A comparison of the words used in Section 105 of the Patents Act, *vis-à-vis* Section 60 of the Copyright Act, makes this position clear. As in the case of Section 60 of the Copyright Act, Section 105 of the Patents Act also operates “notwithstanding anything contained in Section 34 of the Specific Relief Act”. It goes on to entitle any person to “institute a suit for declaration that the use by him of any process, or the making, use or sale of any article by him *does not, or would not,* constitute an infringement of the claim of a patent against the patentee”. The distinction is stark. Apart from the fact that there

is, in fact, no provision in the Copyright Act which parallels Section 105 of the Patents Act – an aspect which would be dealt with presently – the use of the words “does not, or would not” indicates that the provision applies in respect of an act which is *in praesenti* in the process of being committed as well as to acts which may be committed in future. No words, similar to “does not, or would not”, figure in Section 60 of the Copyright Act. The use, by the legislature, of the words “was not” in Section 60 of the Copyright Act, viewed alongside the use of the words “does not, or would not” in Section 105 of the Patents Act, indicates that the legislature has been conscious and careful in the language it employs, and that, by using the words “was not”, there is a deliberate intent to make Section 60 applicable only in respect of past acts, i.e. acts which stands committed and which are being alleged, by the copyright holder, to constitute copyright infringement.

**143.** This position stands underscored if one refers to Section 106 of the Patents Act which, in fact, is the sister provision to Section 60 of the Copyright Act, inasmuch as it deals with the power of the Court to grant relief in the case of groundless threats of patent infringement. Unlike Section 60, Section 106 of the Patents Act, in sub-section (2), provides that, where the person aggrieved by the groundless threat of infringement proceedings, held out to him, institutes a suit against the person threatening him with the said proceedings, “unless in such suit the defendant proves that the acts in respect of which the proceedings were threatened constitute, *or if done, would constitute*, an infringement of a patent...”, the plaintiff would be entitled to the relief sought by him. By use of the italicised words, the legislature has consciously extended to the ambit of Section 106 not only to acts

which actually stand committed, but also to acts which may be committed in future. No similar words find place in Section 60 of the Copyright Act.

**144.** Though the use of the words “was not”, in Section 60 of the Copyright Act, especially juxtaposed with the words used in Sections 105 and 106 of the Patents Act, make it sufficiently clear that Section 60 applies only to acts which already stand committed and which are, at present, being alleged to be in the nature of copyright infringement, resulting in threats of legal proceedings and liability being held out by the copyright holder, the proviso to Section 60, to which there is no parallel in the Patents Act, clarifies the position beyond doubt. The proviso provides that Section 60 shall not apply if the person making the threat, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him. An action for infringement of copyright can be instituted, or prosecuted, only in respect of an act of infringement which already stands committed. The Copyright Act does not provide for, or envisage, an infringement proceeding in respect of an act which is yet to take place. The proviso, therefore, clearly indicates that Section 60 applies only to an act of alleged infringement which has already taken place.

**145.** Mr. Lall and Mr. Sibal are correct in their submission that any other interpretation would render the proviso otiose and completely ineffective. If the benefit of Section 60 were to be extended even in respect of acts which are still in contemplation, and yet to be committed, the result would be that, in advance of committing the act, the person who intends to commit it would be entitled, under Section 60, to institute a suit for declaration that the act *would not constitute*



*an infringement of copyright if committed* (which, as already noted, Section 60 does not permit) and, by securing such an advance ruling, stymie the chance of the copyright holder availing the benefit of the proviso.

**146.** I am entirely in agreement with Mr. Lall in his submission that the structural intent of Section 60 is clear and unmistakable. What the provision envisages is an allegation of copyright infringement being made, accompanied by threats of liability and legal proceedings, by the copyright holder, in respect of an act already committed by the alleged infringer. Ordinarily, if an act of infringement is committed, the copyright holder is expected to institute a suit for remedy against the infringement, and its continuance. If, instead, the copyright holder chooses merely to extend threats to the alleged infringer, the alleged infringer would be entitled, if such threats are groundless, to institute a suit, under Section 60, for a declaration that the act was not one of copyright infringement, and obtain an injunction against continuance of the threats as well as damages. The moment the copyright holder institutes a suit for copyright infringement against the alleged infringer, Section 60 would cease to apply. Clearly, therefore, Section 60 is intended to galvanise the copyright holder into instituting infringement proceedings, if he feels that copyright infringement has taken place, rather than merely sitting back and threatening the alleged infringer. Once he institutes the proceedings – if done with due diligence – the suit for declaration of non-infringement and injunction against the threats would no longer survive.

**147.** Viewed any which way, therefore, Section 60 of the Copyright Act applies only in respect of threats of liability and legal proceedings

held out in respect of acts of alleged infringement of copyright which already stand committed.

**148.** Thus seen, even for this reason, the threat of legal proceedings, held out by Novex to Marriott, by the letter dated 14<sup>th</sup> December 2020, was not in the nature of the threat envisaged by Section 60 of the Copyright Act, as it related to an act which is yet to be committed.

**149.** The proviso to Section 60 of the Copyright Act also supports the submission, of learned Senior Counsel for the plaintiff, that the “person aggrieved”, for the purposes of Section 60, has to be the alleged infringer, and not a third person, who can, statutorily, not be any infringer and against whom no threat of infringement of legal proceedings is held out by the copyright holder. Again, if such a third person is permitted to institute a suit for a declaration of non-infringement under Section 60, the copyright holder would be denied the benefit of the proviso, as a suit for infringement would lie only against the infringer.

**150.** The peculiar consequences, were such a legal position to be permitted to pass muster, are apparent even from the facts of the present case. The threat, by Novex, was held out to Marriott. Marriott buckled, and, in its contract with the plaintiff, included a clause requiring the plaintiff to obtain NOC/license from Novex. Marriott having acted in accordance with the demand/request of Novex, Novex could obviously not institute any infringement suit against Marriott, additionally for the reason that, in the face of the petitioner, in the contract between Marriott and the plaintiff, requiring NOC/license to be obtained from Novex before the recording is, in

which Novex holds copyright, are played any wedding ceremony conducted at Marriott, there is no likelihood of any infringement taking place. Novex, therefore, would never be in a position to institute an infringement suit under the proviso to Section 60. If the present suit were to be entertained at the instance of the plaintiff, the result would, therefore, be that, with no possibility of any infringement taking place, and Novex being thereby disabled of its right to institute any infringement suit, the plaintiff would be entitled to move the Court and obtain a declaration regarding non-infringement, in advance of any infringing act having occurred, and, as the proviso would be rendered inapplicable, Novex would be powerless to seek its benefit.

**151.** Plainly expressed, therefore, it is only a person against whom an infringement suit would be instituted by the copyright holder under the proviso to Section 60, who could be extended the benefit of the provision. A person who could not be sued for infringement, under the proviso to Section 60, cannot, therefore, be a “person aggrieved” within the meaning of the main part of the provision. Any other interpretation would result in extending, to such person, the benefit of the main part of Section 60 while denying, to the copyright holder, the benefit of the proviso thereto.

**152.** It is not permissible for the Court to accord, to a legal provision, which contains a proviso, such an interpretation as would render the proviso nugatory, redundant or otiose.<sup>67</sup> The proviso is as much part of Section 60 as the main body of the provision, and is entitled to equal respect. The relegation of part of the provision to the proviso is

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<sup>67</sup> Refer para 25 of *Delhi Airport Metro Express (supra)*

merely a matter of legislative drafting, and does not undermine the importance of the proviso. Section 60 cannot, therefore, be so interpreted as to consign its proviso to a back seat.

**153.** Even if, *arguendo*, a suit under Section 60 would have been maintainable in the facts of the present case, that suit would have had to be instituted by Marriott, and not by the plaintiff. Marriott did not choose to institute any such suit and, instead, agreed to the demand of Novex. The threat held out by Novex to Marriott evaporated, thereby. It is clearly not permissible for the plaintiff to seek, by means of the present suit, to breathe life into the threat once again, merely so as to avoid complying with the contractual stipulations that Marriott seeks to enforce.

**154.** While emphasising the fact that Section 60 uses the words “any person”, while referring to the person who would institute a suit thereunder, the plaintiff loses sight of the fact that the words “any person” are followed by the words “aggrieved *thereby*”. The word “thereby” obviously refers to the threat held out by the copyright holder, to which the earlier part of the provision alludes. It is only, therefore, a person who is aggrieved by the threat held out by the copyright holder, who can institute a suit under Section 60.

**155.** Corpus Juris Secundum, Edn. I, Vol. IV, as cited in *Kalva Sudhakar Reddy v. Mandala Sudhakar Reddy*<sup>68</sup>, states that “broadly speaking, a party or person is aggrieved by a decision when it only operates directly and injuriously upon his personal, pecuniary and proprietary rights”. It is only where the decision is materially adverse to a person, in that it results in denial or deprivation of his legal rights,

that the person can be claimed to be “aggrieved” thereby, as per *Bar Council of Maharashtra*<sup>24</sup>. Dealing with the expression “parties aggrieved” in the context of Section 22(3)(f) of the Administrative Tribunal’s Act, 1985 read with Order XLVII Rule 1 of the CPC, the Supreme Court held, in *Gopabandhu Biswal v. Krishna Chandra Mohanty*<sup>69</sup>, thus;

“The words mean a person directly affected by the impugned action or order. Only persons who are directly and immediately affected by the impugned order can be considered as “parties aggrieved” under Section 22(3)(f) of the Administrative Tribunal’s Act, 1985 read with Order 47 Rule 1 of Civil Procedure Code”.

**156.** In *Adi Pherozeshah Gandhi*<sup>33</sup>, it was held that the expression “any person aggrieved”, as employed in Section 37 of the Advocates Act, 1961, *vis-à-vis* the order under challenge by him, had to himself suffer grievance, or had to be aggrieved by the very order because it affected him. On the following reasoning, contained in para-11 of the report, the Supreme Court held that a person could not be said to be aggrieved by an order acquitting another person, merely because, in his view, the other person ought to have been convicted:

“11. From these cases it is apparent that any person who feels disappointed with the result of the case is not a “person aggrieved”. *He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits some one who he thinks ought to be convicted does not by itself give rise to a legal grievance.*”

(Emphasis supplied)

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<sup>68</sup> AIR 2005 AP 45

<sup>69</sup> (1998) 4 SCC 447

**157.** The characteristically felicitous words of Krishna Iyer, J., in *M.R. Mini*<sup>17</sup>, on which learned Senior Counsel for the defendants place reliance, accurately delineate the legal position in this regard:

“3. ... May be, the State could have classified candidates university-wise, backward region-wise or otherwise, separately or in any constitutionally permissible combination. We are not here concerned with the prospects of the petitioner under any different admission scheme or reservation project. Mystic maybes are beyond judicial conjecture. Once we hold that the university-wise allocation of seats is valid the misfortune of the petitioner is *damnum sine injuria*, if we may use that expression in this context. *Every adversity is not an injury. Judicial remedy cannot heal every wound or cure every sore since the discipline of the law keeps courts within its bounds.*”

(Emphasis supplied)

**158.** Not being the alleged copyright infringer, and not being the person to whom Novex held out a threat of legal proceedings by its notice dated 14<sup>th</sup> December 2020, the plaintiff cannot, in my view, be regarded as a “person aggrieved” within the meaning of Section 60 of the Copyright Act, so as to be entitled to institute the present suit against the defendants.

**159.** Learned Senior Counsel for the defendants are correct in their submission that the grievance of the plaintiff is not, in fact, against the institution of any infringement proceedings by Novex, or even against the threat held out by Novex in that regard to Marriott – as the threat did not extend to the plaintiff – but against the inclusion, in the conditions stipulated by Marriott and other hotels, for allowing the plaintiff to hold the wedding ceremony in their premises, of the requirement of obtaining NOC/license from the holders of copyright in the recordings which would be played in the said ceremonies. The suit is, essentially, therefore, one that seeks modification of the terms of contract between the plaintiff and Marriott, or other hotels. Such a

suit cannot be instituted under Section 60 of the Copyright Act. The remedies available in a suit instituted under Section 60 are (i) a declaration that the alleged act of copyright infringement was not, in fact, such an act, (ii) and injunction against the continuance of the threats and (iii) damages sustained by the plaintiff by reason of such threats. No threats having ever been extended to the plaintiff, and no allegation of copyright infringement having been levelled against the plaintiff by anyone, I am in agreement with learned Senior Counsel for the defendants that the benefit of Section 60 of the Copyright Act cannot extend to the plaintiff. As learned Senior Counsel have correctly pointed out, once Marriott agreed to the request of Novex and included, in its contract with the plaintiff, the requirement of obtaining NOC/license from Novex, no threat of liability or legal proceedings survived. Marriott having succumbed, in other words, Novex's threat evaporated, *ipso facto*. The threat no longer surviving, there can obviously be no question of any injunction against the continuance of the threat. No allegation of infringement of copyright having been levelled against the plaintiff, the plaintiff could not have instituted a suit for declaration of non-infringement. The plaintiff could not even maintain a suit for damages under clause (b) of Section 60, as the clause required the damages to have been "sustained by reason of such threats". Proximity between the threat and the damages, if any, sustained by the plaintiff is, therefore, the *sine qua non* for clause (b) to apply.

**160.** In the present case, the threat was held out to Marriott. The threat was conditional on Marriott allowing wedding ceremonies to be conducted in its premises, playing recordings in which Novex held copyright, without obtaining the license/NOC from Novex. Marriott,

as learned Senior Counsel for the plaintiff correctly states, opted to follow the path of least resistance, and included, in its terms and conditions with the plaintiff, a condition of obtaining NOC/license from Novex. Novex's demand, thus, stood satisfied. The condition, non-fulfilment of which would galvanise the threat held out by Novex, also stood satisfied by Marriott. As the threat no longer survived, it could not be held that the plaintiff suffered any damage by reason of the threat. If the plaintiff suffers any additional financial burden by inclusion, in the contract with Marriott, of the condition requiring the plaintiff to obtain NOC/license from Novex, or suffered in any other respect on that account, the remedy with the plaintiff lay elsewhere, and would be directed, not against Novex, but against Marriott. The dispute between the plaintiff and Marriott would essentially peregrinate in the realm of contract. I am in agreement with learned Senior Counsel for the defendants that, by instituting the present suit under Section 60 of the Copyright Act, the plaintiff cannot seek modification of its terms of contract with Marriott.

**161.** Mr. Sindhwani's contention that the condition, in the contracts between the hotels and the event management companies, including the plaintiff, requiring NOC/license to be taken from holders of copyright in the recordings to be plated wedding ceremonies, was included under duress, cannot be examined in these proceedings. There is no evidence of any such duress. Duress is a plea of fact, which is to be established in evidence.

**162.** In this context, it is also necessary to note that, except for the communication dated 22<sup>nd</sup> December 2020 from Marriott to the plaintiff, which indicated the incorporation, in the contractual terms



between them, of the requirement of obtaining licence/NOC from Novex to be a consequence of the demand of Novex in that regard, there is no such indication to be found in any of the other contracts which have been placed on record, to which the plaintiff is a part. There is nothing to indicate, in any of the other contracts, to which allusion is to be found in paras 22 to 24 *supra*, that the condition requiring obtaining of NOC/license was pursuant to any demand by any of the Defendants 1 to 3. The question of duress does not, therefore, arise.

**163.** Which brings me to another aspect of the controversy, regarding which the submission of learned Senior Counsel for the defendants merit acceptance. No suit, under Section 60 of the Copyright Act, at the instance of any person, against Defendants 2 and 3, on the facts which have been placed on record, can be maintained, as there is nothing to indicate that either of the said defendants ever extended any threat of institution of legal proceedings, either to Marriott or to any of the other defendants. As already noted, the sole document, in which such a threat finds place, is the communication dated 14<sup>th</sup> December 2020 from Novex to Marriott. Even for that reason, therefore, no suit under Section 60 of the Copyright Act could, on the facts before the Court, have been instituted against Defendants 2 and 3.

**164.** The present suit could not, therefore, have been instituted by the plaintiff under Section 60 of the Copyright Act.

**VI.** Does the Copyright Act foreclose the availability of other statutes for seeking remedies relatable to copyright – specifically Section 34 of the Specific Relief Act?

165. Learned Senior Counsel for the plaintiffs have argued that the Copyright Act is a self-contained code, and all reliefs relating to copyright, or copyright infringement, have necessarily to be sought under the Copyright Act. In this context, learned Senior Counsel has cited *Bristol Myers*<sup>9</sup>, *Novex Communication*<sup>10</sup>, *Time Warner Entertainment*<sup>13</sup> and *Tekla Corporation*<sup>18</sup>. Mr. Sindhwani argues, *per contra*, that the right to seek a declaration, by instituting a suit, available under the CPC, is not ousted by Section 60 of the Copyright Act and relies, for the purpose, on *Supreme General Films Exchange*<sup>22</sup>, *Gene Tech*<sup>23</sup> and *Ganga Ram Hospital Trust*<sup>27</sup>.

166. *Bristol Myers*<sup>9</sup>, in para 17E, holds as under:

“E. The Patents Act is the sole repository of law relating to patents. There is no inherent or common law right with respect to patent, as exists with respect to trade marks. Just like the Patents Act is an Act to amend and consolidate the law relating to patents, the Copyright Act is also an Act to amend and consolidate the law relating to copyright and in respect thereof it has been held in *Time Warner Entertainment Company LP v. RPG Netcom Globe*<sup>70</sup>, *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.*<sup>71</sup>, *Krishika Lulla v. Shyam Vithalrao Devkatta*<sup>72</sup>, *Navigators Logistics Ltd. v. Kashif Qureshi*<sup>73</sup>, *Satish Kumar v. Khushboo Singh*<sup>74</sup>, that copyright is a statutory right and there is no common law right to copyright and no copyright outside the statute exists or can be claimed. The same has also been observed with regards to the Designs Act, 2000 in *Crocs Inc. USA v. Aqualite India Ltd.*<sup>75</sup> and *Micolube India Ltd. v. Saurabh Industries*<sup>76</sup> The same will be the position with respect to patents. Any rights relating to patents can be claimed only in accordance with the provisions of the Patents Act and not elsewhere.

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<sup>70</sup> (2007) 140 DLT 758

<sup>71</sup> (2008) 13 SCC 30

<sup>72</sup> (2016) 2 SCC 521

<sup>73</sup> (2018) 254 DLT 307

<sup>74</sup> CS (COMM) No. 89 of 2019, order dated 14-10-2019 (Del)

<sup>75</sup> 2019 SCC OnLine Del 7409

<sup>76</sup> (2013) 199 DLT 740 (FB).

**167.** *Novex*<sup>10</sup>, which was instituted by Defendant 1 as the plaintiff, involved a controversy similar to that in the case before us, but in reverse. Novex, in that case, instituted a suit against the decision of the National Restaurant Association (NRA) – the defendant therein – not to obtain licenses from Novex before publicly performing recordings in which Novex held copyright, as communicated by letters dated 9<sup>th</sup> December 2015 and 22<sup>nd</sup> December 2015. Novex, therefore sought a declaration that the said letters were illegal, null and void, as well as an injunction, restraining the members of the NRA from publicly performing any of the recordings in which Novex held copyright without obtaining a license from it. This Court, through a learned Single Judge, observed that, though Section 60 of the Copyright Act permitted institution of a suit against groundless threats of copyright infringement being raised by the copyright holder, there was no provision, in the Copyright Act, which operated *vice versa*. Further, in para 21 of the report, this Court opined that Section 34 of the Specific Relief Act could not be invoked seeking a declaration of copyright without alleging infringement by the person against whom declaration was claimed. This observation, in fact would indicate that Section 34 of the Specific Relief Act is not completely foreclosed, even where the relief sought is in respect of copyright infringement. For ready reference, paras 20 and 21 of the decision may be reproduced thus:

“20. Copyright is a statutory right. The statute i.e. the Copyright Act, though has vested a right to sue a person claiming copyright and threatening another with legal proceedings and liability for infringement thereof, has not vested such right to sue a person denying copyright, as the defendant no. 1 is denying copyright claimed by plaintiff. The only right conferred under Section 55 of the Act on a person claiming copyright, is to sue for infringement thereof. It is not the case of the plaintiff that the defendant no. 1 association is infringing the copyright claimed by plaintiff. Mere

denial of copyright, as the defendant no. 1 is doing, does not constitute infringement under Section 51 of the Act.

21. As far as reference to Section 34 of Specific Relief Act is concerned, in my opinion the same cannot be invoked to claim declaration of copyright without alleging infringement by the person against whom declaration is claimed. Copyright being only a creation of statute and not a natural right, claims therefor axiomatically can only be as conferred by statute, and not outside the statute.”

**168.** Paras 9 and 10 of *Time Warner Entertainment*<sup>13</sup>, on which Mr. Lall places reliance, read thus:

“9. In view of the above provisions, it is not possible to accept the contention of the appellants-plaintiffs that they are entitled to injunction under the law of tort. The Act itself stipulates and specifically confers statutory rights in respect of copyright and also provides for remedies where there is infringement of the statutory right. Section 16 of the Act specifically bars a person from claiming copyright or any other similar right in any work otherwise than in accordance with the provisions of the Act itself or any other law in force. Copyright exists and can be claimed only in accordance with the provisions of the Act or under any law which was in force at the time when the Act was enacted. The appellant-plaintiffs cannot claim copyright and sue for infringement of copyright de-hors the Act. Common law rights under copyright law were abrogated earlier by Section 31 of the Copyright Act, 1911, which was enacted to amend and consolidate the law relating to copyright. Section 31 of the Copyright Act, 1911 read as under:

**“31. Abrogation of common law rights.** — No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment 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.”

10. The aforesaid provision, therefore, had the effect of abrogating all common law rights as they existed. A person, therefore, was entitled to copyright only under the provisions of the said Act and any other statutory enactment in force when the Copyright Act, 1911 was enacted. Section 16 of the Act has to be read in the light of Section 31 of the Copyright Act, 1911.”

**169.** The decisions cited by Mr. Lall and Mr. Sibal, noted hereinabove, do not, in my considered opinion, foreclose the availability of Section 34 of the Specific Relief Act in a case such as the present. As to whether the plaintiff can seek the reliefs, sought in the present plaintiff, under Section 34 of the Specific Relief Act, is altogether another matter, which would be presently addressed. The omnibus proposition, mooted by Mr. Lall and Mr. Sibal, that no relief, relating to copyright, can at all be sought under any provision outside the Copyright Act appears, however, to be, to be too wide to pass legal muster. *Bristol Myers*<sup>9</sup> was concerned with whether, as in the case of trademarks, any common law right of copyright existed, outside the Copyright Act. What was held by this Court was that any right to copyright had necessarily to be restricted to the four corners of the Copyright Act. Similarly, *Time Warner Entertainment*<sup>13</sup> was also concerned with whether an injunction, under the law of tort, which belongs to the realm of common law, relating to copyright, could be claimed. Here, too, this Court held that any right to copyright had to emanate from the Copyright Act. That proposition, one may say, is practically a truism. The right to copyright, quite obviously, has to be derived from the provisions of the Copyright Act. *De hors* and outside the Copyright Act, no right to copyright exists in law.

**170.** That would not mean, however, that a proceeding, ventilating rights arising under the Copyright Act, cannot be instituted under Section 34 of the Specific Relief Act. In fact, the decision in *Novex*<sup>10</sup> would seem to indicate to the contrary.

**171.** Even on the premise that, merely by virtue of its being a self-contained code, the Copyright Act cannot foreclose the applicability

of the Specific Relief Act, or of Section 34 thereof, it nonetheless remains to be seen whether the reliefs sought in the present suit could be claimed under Section 34.

VII. Is Section 34 of the Specific Relief Act applicable? – Power to pass a declaratory decree outside Section 34

**172.** On its plain words, Section 34 of the Specific Relief Act would not apply to the present case. Section 34 empowers a Court to issue a declaration of status or right. The person who seeks such a declaration has, as per the provision, to be a “person entitled to any legal character, or to any right as to any property”. Further, the defendant, against whom the suit is instituted, has to be a person “denying, or interested to deny, *his* title to such character or right”.

**173.** Plainly, the defendants are not, in the present case, denying the title of the plaintiff to any property, or the legal character of the plaintiff. The averments in the plaint are silent as to the nature of the “legal character” of the plaintiff, or the title of the plaintiff to property, which the impugned actions of the defendants have placed in jeopardy.

**174.** In *Bhoop Singh*<sup>51</sup>, the plaintiff Bhoop Singh sought a declaration regarding his paternity; that he was the son of one Mohkam Singh, not of Ganga Sahai. Having failed before two Courts below, both of whom held that Bhoop Singh could not have sought a declaration of the kind sought, Bhoop Singh carried the matter to the High Court of Allahabad. The High Court identified the first issue that arose before it for consideration as being whether, in the circumstances of the case, Bhoop Singh was, or was not, entitled to a

declaration of parentage. The verdict was returned in the context of Section 42<sup>77</sup> of the Specific Relief Act, 1877, which was *pari materia* with Section 34 of the Specific Relief Act, 1963. The High Court commenced its discussion with the following observations, in para 9 of the report:

“9. The paramount condition which, according to this section, a plaintiff must satisfy before he brings a suit for a mere declaration, therefore, is that he should be entitled to any ‘legal character’ or to any ‘right as to any property’. On the plaint, as framed, no question arose of any right to any property. Indeed, there was no reference to any property in the plaint, much less was there any relief sought in respect of any right to a property. The only question then is whether in his plaint the plaintiff had alleged that he was entitled to any ‘legal character’ within the meaning of this section.”

Thereafter, the High Court went on, in para 21 of its decision, to explain what, in its view, was the correct interpretation to be placed on the words “legal character”, as contained in Section 42 of the erstwhile Specific Relief Act, thus:

“21. Before I refer to cases in which the words ‘legal character’ in Section 42 of the Specific Relief Act, were interpreted as an expression of wide import so as to embrace the status of the person concerned, I may just make a brief observation with regard to the meaning which, in my view, should be assigned to that expression. *In the first place, it must be kept in view that these words have specific reference to the person or the party seeking a declaration under this section without the same being affected by the circumstance whether or not he has a right to any property also. The words ‘legal character’ and ‘right as to any property’ have been used disjunctively and not conjunctively, so as to entitle the plaintiff to a declaration on the exclusive basis of either the one or the other. Again, the word ‘legal’ before the word ‘character’ is also not without significance. It signifies the status in society of the person seeking a declaration. Whether a man is a legitimate son of another, whether he is the adoptive father of another, whether he has legally married a particular woman or whether by virtue of his relationship with a particular family, he is entitled to a certain privilege and concession are instances of questions involving his*

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<sup>77</sup> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief. Provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

*'legal character' within the meaning of this section, and if he finds a danger or entertains any fear of a challenge to his status as such, he may surely seek relief in a Court of law. This position appears to be amply supported by the rulings which I shall now mention."*

(Emphasis supplied)

Inasmuch as Bhoop Singh was merely seeking a declaration of his legal status as the son of Mohkam Singh, the High Court, identifying the primary object of Bhoop Singh, in launching the suit, to, possibly, have been "only to get a judicial recognition of his status as a legitimate son of his father to retain such a loss of reputation as the defendant may have managed to cause, and to preserve the same against any further danger", held the suit to be competent.

175. The issue in consideration in *Gurudwara Parbandhak Committee*<sup>15</sup>, rendered by a Division Bench of this Court, was whether a declaration regarding the right to worship in a gurdwara could be sought under Section 34 of the Specific Relief Act. This Court answered the said issue thus:

*"The expression "legal character" has been held to be synonymous with legal status. Mody J. has discussed this question at length in Major General Shanta Shamsher Jung Bahadur Rana v. Kamani Brothers Private Ltd.*<sup>78</sup>. The learned Judge pointed out that the said expression "legal character" which occurs in section 42 of the Specific Relief Act and section 41 of the Indian Evidence Act had not been defined by those Acts; they had also not been the subject matter of any previous decision. It was held in that case that the managing director of a company was not entitled to any legal character within the meaning of section 42 of the Specific Relief Act.

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<sup>78</sup> AIR 1959 Bombay 201



Our attention has also been invited in this connection to **Wajid Ali Shah v. Dianat-ul-Lah Beg**<sup>79</sup>, where Sir Petheram C.J. observed as follows:—

*“The plaintiff in this case cannot sue as one of the first class, because he has no “legal character” which is denied by any one: he only asserts his character as a Muhammadan, and that has not been questioned. Nor does he for himself assert a right as to any property, and by no act of the defendant has his right to any property been denied. The suit, therefore, does not come under the provisions of s. 42”, etc.*

The present plaintiffs' right to worship at the Gurdwaras under the control of the GPC and even to elect members of the GPC, as members of the Sikh community living in Delhi, has not been denied. Yet the above character would not be an assertion of right to any property; by no act of the defendants in the suit has their right to any property been denied in the language of Petheram C.J.

We do not see how the decision in **Sat Narain Gurwala v. Hanuman Parshad**<sup>80</sup>, is of any assistance to the plaintiffs. In this case, the expression “legal character” was held to be wide enough to include the right of franchise and of being elected to the Municipal Committee. It was a case of wrongful rejection of nomination papers to the Municipal Committee of Delhi.

It seems to us that no declaration can be granted in favour of the present plaintiffs since they do not possess a legal character, which is a pre-requisite for granting a declaration under section 42 of the Specific Relief Act.

In any view of the matter, therefore, the suit for declaration by the present plaintiffs is not maintainable.”

**176.** In the context of Section 42 of the erstwhile Specific Relief Act, the High Court of Bombay, in **Major General Shanta Shamsher Jung Bahadur Rana**<sup>52</sup>, held that the expression “legal character”, contained in Section 42, meant “legal status”. Proprietorial rights, it was held, did not result in any “legal status” or “legal character”. The right resulting in a legal character has to be personal in nature. The

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<sup>79</sup> ILR 8 Allahabad 31

<sup>80</sup> XLVII PLR 94

test of what would constitute “legal character”, for the purposes of Section 42, was thus identified in para 49 of the decision:

“49. Therefore, to repeat what Holland has said, a legal right can be classified to be a personal right and would amount to one's status, and is distinct from, a proprietary right, when it involves a peculiarity of the personality arising from anything unconnected with the nature of the act itself which the person of inherence can enforce against the person of incidence. The personality recognised in the law of persons is such as modifies indefinitely the legal relations into which the individual clothed with the personality may enter. This then appears to be the test of what is legal status or “legal character” as mentioned in s. 42 of the Specific Relief Act.”

**177. *Princeton Niketan*<sup>14</sup>**, rendered by S. Ravindra Bhat, J. (as he then was), sitting singly in this Court, precisely identified the contours of Section 34 of the Specific Relief Act. In that case, the plaintiff sought a declaration that an agreement to sell, executed by the first defendant in favour of the second defendant, was illegal, null and void and not binding on the plaintiff. This Court held that the plaintiff had no legal status of which it was seeking a declaration and could not maintain the suit. Para 8 of the decision may, in this context, be reproduced:

“8. In this suit case, the plaintiff wishes the Court to declare that a so called cancelled contract, entered into between the first and the second defendant, are null and void, and ineffective. The suit unambiguously states that the first defendant was impleaded as the legal representative of the deceased owner of the suit property. The suit pending in the Patna civil court, is a title suit, where the question of ownership or other related relief in respect of the property is in issue. The present plaintiff is not a party in that suit; it admittedly has no title in respect of the property. It has not claimed specific performance of the contract, it relies upon, said to have been entered into in 2000. According to the suit averments, the occasion to do so will arise when the title suit is disposed off (presumably in the event of the first defendant succeeding). The plaintiff does not claim any lien, or encumbrance, or interest of such kind, in the suit property, as to constitute an interest, as known to law. At best the right it has to the suit property is contingent (and dependant on the happening of an uncertain event, viz the first defendant succeeding in the title suit). Furthermore, the plaintiff does not have privity of contract with the second

defendant. All these facts, read in the backdrop of the previous discussion as to the meaning of what is “right or status” shows that the declaration sought does not pertain to the legal right or legal status of either party to the suit. The document is firstly - according to the plaint, not in force, having been cancelled. Second, it at best imposed duties and obligations as between parties; the plaintiff does not have any right or title to the suit property, and therefore, lacks *locus standi* to impugn it.”

**178.** A Bench of two Hon’ble judges of the Supreme Court, in para 35 of the decision in *A.C. Muthaiah*<sup>20</sup>, clearly holds that a declaratory decree could be passed only in terms of Section 34 of the Specific Relief Act, and, significantly, that the only exception thereto is to be found in the Copyright Act and the Patents Act, which permit, notwithstanding Section 34, institution of a suit for declaration that the threat of infringement of copyright or patent is groundless. Para-35 of *A.C. Muthaiah*<sup>20</sup> merits reproduction, *in extenso*:

“35. Further, the appellant has sought declaratory decrees in both the suits. *However, the declarations sought can be granted only in terms of Section 34 of the Specific Relief Act, 1963.* A bare reading of Section 34 of the Specific Relief Act would indicate that the plaintiff in order to be entitled to a legal character or to any right will have to seek declaratory relief. The averments made in the plaints of the two suits do not indicate that the appellant is claiming that he is entitled to declaration relating to a legal character or he is claiming any legal character. *The only exception to Section 34 of the Specific Relief Act can be found in the Copyright Act and the Patents Act, wherein suits can be filed notwithstanding the provisions of Section 34 of the Specific Relief Act to declare that any threat of infringement of copyright or patent is groundless.* Further, Section 41(j) of the Specific Relief Act provides that an injunction claimed should be refused when the plaintiff has no personal interest in the matter. Averments made in Para 18 of the rejoinder do not make the provisions of the Specific Relief Act applicable to the facts pleaded by the appellant in the two suits.”

(Emphasis supplied)

**179.** It is true that an earlier Bench, also of two Hon’ble judges of the Supreme Court held, in *Supreme General Films Exchange*<sup>22</sup>, that

Section 42 of the Specific Relief Act, 1877, was not exhaustive of the power to grant a declaratory decree. I am inclined, however, to follow *A.C. Muthaiah*<sup>20</sup>, not only because it is a later decision, and specifically deals with Section 34 of the present Specific Relief Act, but also because it takes into account the right to seek declaratory decrees of threats of copyright infringement, being held out against the plaintiff, as groundless, under Section 60 of the Copyright Act.

**180.** Apropos Section 34 of the Specific Relief Act, it is clear that, on the anvil of the law declared in respect of the said provision by the decision is already cited hereinabove, the declaration sought by the plaintiff does not relate to its legal character or right to any property. There is no denial, by any of the defendants, of the plaintiff's right to property, or of its legal character in any way. The grievance of the plaintiff stems from a contractual stipulation, in the terms and conditions governing the relationship between the hotels and the plaintiff, requiring the plaintiff to obtain a license/NOC from the persons who hold copyright in the recordings which the plaintiff proposes to play in its wedding ceremonies. By no stretch of imagination can it be said that such a contractual stipulation amounts to a denial of the legal status or right of the plaintiff to property. The declaration that is being sought in the present suit is, therefore, clearly outside the scope of Section 34 of the Specific Relief Act.

**181.** Assuming, for the sake of argument, that the right to seek a declaration is not restricted to Section 34 of the Specific Relief Act, nonetheless, in the facts of the present case, can a declaration, in terms of the prayers in the suit, be sought by the plaintiff?

VIII. Section 52(1)(za), Copyright Act – Prayers in the suit

**182.** Inasmuch as the declaration is entirely predicated on Section 52(1)(za) of the Copyright Act, read with the Explanation thereto, it becomes necessary to carefully analyse the said provision.

**183.** Section 52 of the Copyright Act enlists acts which shall not constitute infringement. The circumstances in which copyright is infringed are to be found in Section 51. The plaintiff claims the benefit of Section 52(1)(za). It is not the case of the plaintiff that, even if Section 52(1)(za) were not to apply to it, it would nonetheless not be liable to obtain a license from Defendants 1 to 3, before playing recordings, in which they hold copyright, in wedding ceremonies. It is not necessary, therefore, to allude to Section 51.

**184.** Section 52(1)(za) ordains, to the extent relevant, that the communication of a literary, dramatic or musical work or of a sound recording to the public in the course of any *bona fide* religious ceremony would not constitute infringement of copyright. The Explanation to Section 52(1)(za) reads thus:

“*Explanation.* – For the purpose of this clause, religious ceremony including<sup>81</sup> a marriage procession and other social festivities associated with a marriage.”

**185.** Coming to the provision itself, Section 52(1)(za) specifies that it is only the communication to the public of a sound recording in the course of any *bona fide* religious ceremony which would not amount to copyright infringement. The Explanation includes, within the

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<sup>81</sup> It appears that the wording of the Explanation to Section 52(1)(za) contains a malapropism. The word “including” should read “includes”. This appears to be a legislative glitch, and it is advisable that the legislature corrects it. To make sense of the provision, however, I have to read it as “For the purpose of this clause, religious ceremony includes a marriage procession and other social festivities associated with the marriage”.

ambit of the expression “religious ceremony”, “a marriage procession and other social festivities associated with a marriage”. Reading the main clause in the Explanation together, therefore, to the extent it is relevant for our purposes, communication, to the public, of sound recordings in marriage processions and other social festivities associated with the marriage provided the marriage procession, or other social festivities associated with the marriage, has to be *bona fide*, for the benefit of Section 52(1)(za) to be available thereto.

**186.** It is not possible to accept the contention that the reference to a religious ceremony, as contained in Section 52(1)(za), should also percolate to its Explanation. Once the Explanation includes, in the expression “religious ceremony”, for the purposes of Section 52(1)(za), a marriage procession and other social festivities associated with the marriage, every marriage procession, and all social festivities associated with the marriage would, *ipso facto*, be deemed to be a “religious ceremony”. It is not necessary that the marriage procession, or the associated social festivities, partake of any religious character. Indeed, it would appear somewhat quixotic to require the marriage procession, or associated social festivities, to be religious, in order for them to be entitled to the benefit of the Explanation to Section 52(1)(za).

**187.** What celebrations, and what festivities, would qualify as “social festivities associated with the marriage” is clearly a pure question of fact, to be decided on a case to case basis. There cannot, in my view, be any strict yardstick by which one could definitively regard a particular function, or ceremony, as a “social festivity associated with the marriage”. One of the questions that was raised

during arguments was whether, for example, a 25<sup>th</sup> wedding anniversary would qualify as a “social festivity associated with the marriage”. The question, in my view, is not capable of an easy resolution. If and when a Court is seized with the issue on merits, the Court would have to expound on the nature and extent of “association” which would suffice for the festivity to be regarded as associated with a marriage. Should festivities associated with the marriage be limited to the festivities which take place immediately prior to a marriage or immediately pursuant thereto? Would they, for example, include a reception which is held a month after the marriage has taken place? Would the silver, or gold, or diamond wedding anniversary, qualify as a social festivity associated with the marriage? What is the difference between “social festivities” and other festivities associated with the marriage? I highlight these issues only to underscore the position that the application of the Explanation to Section 52(1)(za) may involve consideration of various factors, which would, in turn, depend on the facts of the case before the Court, including the nature of the event, the nature of the festivity, and the extent and nature of the association between the festivity and the marriage.

**188.** Then again, not every social festivity associated with the marriage qualifies for the benefit of Section 52(1)(za), read with the Explanation thereto. The social festivity in question has to be *bona fide*. Unfortunately, the Copyright Act does not provide any guidance as to when a particular ceremony could be regarded as *bona fide*. This, again, would be an issue which may arise on a case to case basis. In *Shiv Sarup Gupta v. Mahesh Chand Gupta*<sup>82</sup>, the Supreme

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<sup>82</sup> (1999) 6 SCC 222

Court defined “*bona fide*” as meaning “natural, not spurious, real, pure, sincere”. Elsewhere in the same decision, the expression was defined as “in good faith, without fraud or deceit”. Etymologically, *bona fide* is Latin for “in good faith”.

**189.** In order for the playing or communication of recordings, in festivities associated with the wedding, not to amount to copyright infringement, therefore, it would be necessary for the claimant so asserting that (i) the festivity in question is a “social festivity”, (ii) the festivity is associated with the marriage and (iii) the festivity is *bona fide*.

**190.** Prayer (a) in the present suit seeks a declaration “that there is no copyright infringement when sound recording and/or musical works and lyrics are utilised, by the Plaintiff or otherwise, at marriages and ceremonies associated thereto, in view of the express exception from copyright infringement provided under Section 52(1)(za) of the Act”. Prayers (b) and (c) are similar, in terms, to prayer (a), insofar as they refer to “marriage and related ceremonies”. Prayer (d) seeks a decree of permanent injunction restraining the defendants and all others acting on their behalf from requiring the plaintiff or other similar entities to seek licenses/NOC from Defendants 1 to 3 “for marriage processions and ceremonies associated with marriages”.

**191.** *Prima facie*, such an omnibus declaration cannot be granted.

**192.** Section 52(1)(za) of the Copyright Act, howsoever widely it may be read, does not state that there would never be copyright infringement, if copyrighted sound recordings are played “in



marriages and ceremonies associated therewith” without obtaining a license from the copyright holder. The exemption applies only to marriage processions and social festivities associated with the marriage; provided, further, that they are *bona fide*.

**193.** In this context, the judgment of the High Court of Gujarat in *Devendrakumar Ramchandra Dwivedi*<sup>8</sup>, as authored by K.S. Radhakrishnan, CJ (as he then was), is relevant. The petitioner, in that case, sought relief against disruption of the Navratri Garba/Dandiya Mahotsav, being conducted by it. The disruption was on the ground that sound recordings were being played, in the said festivities, without obtaining a license from the copyright holder thereof. The petitioner contended that no such license was required and relied, for the purpose, on Section 52(1)(za) of the Copyright Act.

**194.** The High Court adopted the view that the exception, covered by Section 52(1)(za), was for non-profit performances of music and other non-dramatic works, which were not intended to serve any commercial purpose and not for private financial gain. Para 13 of the judgment also notes the content of the Explanation to Section 52(1)(za). Paras 11 to 14 of the judgment may be reproduced thus:

“11. Section 52(1) exempts a variety of limits on the rights of the copyright owner in the form of compulsory licenses, complete exemptions from liability and other privileges such as fair or honest use. Section 52(1), (k), (l) and (za) generally refer to non-profit performances of music and other non-dramatic works. Basic thrust is to exempt live performances of such works when there is no commercial purpose and when there is no admission charge and are used exclusively for educational, religious or charitable purposes and not for any private financial gain.

12. Music recording to be heard in public or Garba and Dandiya dance performance in an enclosed room or hall for the common use of the residents in any residential premises as part of the amenities provided exclusively or mainly for residents therein

would not amount to infringement of copyright. So also the activities of a club or similar organization which is not established or conducted for profit. Further, the performance of a literary dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience or for the benefit of a religious institution would not infringe copyright. So also in the case of Folk Music or public domain music.

13. The Central Government - State Government or any local authority can arrange the performance of a literary, dramatic or musical work, officially which will not amount to infringement of copyright or also in connection with a bonafide religious ceremony like Navratri Pooja, Arati etc. so also marriage procession or other social festivities associated with a marriage, would not amount to infringement of copy right.

14. Therefore, the main thrust of Section 52(1) of the Copyright Act, 1957 is to exempt live performance of such works when there is no commercial purpose and when there is no admission charge and/or when admission proceeds are used exclusively for educational, religious or charitable purpose and not for private personal financial gain. Above principle is generally called 'fair or honest use doctrine' which constitutes the most significant limitation on the exclusive rights held by a copyright owner. 'Fair Use Doctrine' was first articulated by Justice Story in *Folsom v. Marsh*<sup>83</sup>, in the year 1841. Learned Judge, opined that quoting copyrighted material in the course of preparing a biography or a critical commentary might be excusable, but not if so much is taken, that the value of the original is sensibly diminished, or the labours of the original author are substantially to an injurious extent appropriated by another. Fair use doctrine has another object to achieve is to promote the progress of science and the useful arts. Fair use doctrine comes into play when a too literal enforcement of the copyright owner's rights would operate to the detriment of the public interest in access to and dissemination of knowledge, and unauthorized copying can be tolerated without significant economic injury to the copyright owner. Fair use doctrine is mixed question of law and facts and if the use is commercial rather than nonprofit, it is presumed to be unfair and to have a likely adverse impact on the market for the owners work, the burden is on the organizers to prove otherwise. In *Sony Corporation of America v. Universal City Studios*<sup>84</sup>, the Court sustained a claim of fair use for home videotaping of copyrighted television programme - a use rather clearly falling outside the enumerated categories. In *Harpaer & Row Publisher v. Nation Enterprises*<sup>85</sup>, involving a news magazine's quotations from the to-be published memories of President Ford relating to his pardon of

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<sup>83</sup> 9 F. Cas. 342

<sup>84</sup> 464 U.S. 417(1984)

<sup>85</sup> 471 U.S. 539, 560 (1985)

President Nixon - a use falling rather clearly within the enumerated category of news reporting, the Court rejected the claim of fair use.”

Most importantly, para 15 of the judgment concluded thus:

*“Question whether certain acts fall within exempted categories enumerated under Section 52(1) of the Act has to be decided according to facts of each case. The theory of presumed intention or fair use and infringement, public interest etc. are to be judged on the material we get in a given case. Difficulty would arise when such copy rights are exploited for commercial purpose, which may give rise to a complaint of infringement. It is unnecessary in this case to further expatiate on this issue since on the facts we have found that none of the statutory or constitutional rights of the petitioner has been violated.”*

(Emphasis supplied)

The position that the entitlement, to the benefit of the Explanation to Section 52(1)(za) would depend on the facts of the case, and the event in respect of which the benefit is being sought, thus, stands recognized by the High Court of Gujarat in this case.

**195.** As I do not intend to return any finding on the merits of the controversy raised in the present suit, it is unnecessary for me, too, like the High Court of Gujarat, to further expatiate on the scope and ambit of Section 52(1)(za) of the Copyright Act. Undeniably, however, there exists a view, by a Division Bench of a Constitutional Court, that the exemption granted by the various clauses of Section 52(1), including clause (za) and the Explanation thereto, are not intended to apply to commercial festivities or ceremonies, but cater to non-profit activities.

196. The Supreme Court has, in its decisions in *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*<sup>86</sup> and *Richa Mishra v. State of Chhattisgarh*<sup>87</sup> held that the golden rule of interpretation of statutes, presently, is not the rule of plain and literal meaning, but the rule of purposive construction. In that view of the matter, it may become necessary, in an individual case in which the benefit of the Exception to Section 52(1)(za) is being claimed for “social festivities connected with marriage”, to examine whether the case deserves the benefit of the provision. It may not be possible to ignore the fact that religious ceremonies, as also marriage processions, are non-profit events, which partake of no commercial colour or character. If, therefore, a copyrighted recording is played on either of these occasions, it is not motivated by consideration of profit, and the communication of the according to the public is not for any commercial purpose. There is, clearly, qualitatively a distinction between such a case, and a situation in which copyrighted recordings of, for example, hit Bollywood songs, are played by DJs, often for huge remunerations. The motivation of the DJ who plays the recordings, on such occasions, is clearly commercial. Given the nature of “bona fide religious ceremonies” and “marriage processions”, it might be a moot point, not easily resolved, as to whether such commercial exploitation of copyrighted recordings, in extravagant wedding celebrations, would be entitled to the benefit of the Explanation to Section 52(1)(za), by treating them as “social festivities associated with marriage”.

197. I refrain from returning any final opinion thereon, as, in my considered view, the present petition is not even maintainable as filed.

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<sup>86</sup> (2016) 3 SCC 619

I am, however, entirely in agreement with learned Senior Counsel for Defendants 1 to 3 in their submission that, given this position, an omnibus declaration, to the effect that it is not necessary to take any licenses/NOC from the copyright holders, whose recordings would be played in wedding ceremonies, cannot be granted. Each case would have to be examined on its own facts, as para 15 of *Devendrakumar Ramchandra Dwivedi*<sup>87</sup> clearly states. Mr. Sibal is correct in his submission that the suit essentially seeks an advance ruling in abstract, which is impermissible and cannot be sought, or granted. Without providing the details of the festivities, with respect to which the declaration is being sought, the invocation of Section 52(1)(za) of the Copyright Act, is ex facie misconceived.

**198.** Even if, therefore, a Court is competent to grant a declaratory decree even beyond the parameters of Section 34 of the Specific Relief Act, such a decree, in the facts of the present case and keeping in mind Section 52(1)(za) of the Copyright Act, cannot be granted.

**199.** Learned Senior Counsel for the plaintiff have also questioned the maintainability of the present suit, on the anvil of Order I Rule 3 and Order II Rule 3 of the CPC, and I am in agreement with them on this score as well.

**IX.** Order I Rule 3, CPC

**200.** The conjunctive ‘and’ between clauses (a) and (b) of Order I Rule 3 makes it clear that cumulative satisfaction of both clauses is necessary before more than one person could be joined in one suit as defendants.

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<sup>87</sup> (2016) 4 SCC 179

**201.** Clause (a) requires the right to relief, as claimed in the suit, to be in respect of, or arising out of, the same act, or transaction, or series of acts or transactions. In the present case, the transaction between Novex and Marriott is unique, in that there is no similar communication from Novex to any other defendant, or from Defendants 2 and 3 to any of the other defendants. It constitutes, therefore, an individual transaction. By the said transaction, Novex called upon Marriott to require any person, playing the recordings in which Novex held copyright, in wedding ceremonies conducted at Marriott, to obtain a license/NOC from it. Marriott accepted the request and included such a stipulation in the contract with the plaintiff. The transaction between Novex and Marriott, thereby, stood worked out.

**202.** Marriott, thereafter, in its contract with the plaintiff, included a provision requiring the plaintiff to obtain a license/NOC from Novex, in respect of recordings in which Novex held copyright. This act is, obviously, different from the act of Novex writing to Marriott, requiring such a license/NOC to be taken.

**203.** Insofar as Defendants 2 and 3 are concerned, there is no communication from them, to any of the other defendant sought to the plaintiff, requiring a license/NOC to be taken from them, in respect of the recordings in which they hold copyright. In fact, there is no act which has been committed *vis-à-vis*, or against, the plaintiff, by more than one of the impleaded defendants, together. Defendant 1 Novex committed no act, directed against the plaintiff. Each of the Hotel defendants (Defendants 4 to 7) executed its own individual contract

with the plaintiff. Each contract is an individual “act”. Each event that the plaintiff proposes to hold would be a separate event, covered by a separate contract with the owner of the venue/Hotel. The grievance of the plaintiff, with respect to the insistence of the concerned hotel that license/NOC be obtained from the copyright owner would, therefore, with respect to each such contract with each such hotel, constitute a distinct cause of action, giving rise to a different relief.

**204.** In this regard, it is important not to confuse commonality of reliefs with commonality of questions of law which may arise in the case. The former relates to clause (a); the latter to clause (b). The use of the words “whether jointly, severally or in the alternative”, in clause (a) of Order I Rule 3 makes it apparent that individual defendants, against whom individual reliefs are sought, can also be joined in one suit. What is essential is, however, that the plaintiff has a right to relief against each such person, or against such persons in the alternative, and that, *more importantly, the right to relief arises out of the same act, the same transaction, or the same series of acts or series of transactions.* The individual contracts with the individual hotels cannot be regarded either as the same act or transaction or the same series of acts or transactions. The fundamental sine qua non of Order I rule 3 of the CPC is not, therefore, met in the present case. A joint suit could not, therefore, have been maintained against Defendants 1 to 3 or Defendants 4 to 8.

**205.** The impleadment of all the defendants jointly, in the present suit, therefore, infracts Order I Rule 3.

X. Order II Rule 3 of the CPC – A perspective view

**206.** Order II Rule 3 deals with the circumstances in which more than one cause of action can be joined in one suit. Order II Rule 3(1) allows a plaintiff to join, in one suit, several causes of action, *provided they are against the same defendant or the same defendants jointly*. In other words, the plaintiff must have each cause of action against each of the defendants, or jointly against all the defendants.

**207.** In the present case,

- (i) the plaintiff has no cause of action against Defendant 1 Novex, as the threat, held out by Novex, is only to Marriott,
- (ii) the plaintiff has no cause of action against Defendant 2 or Defendant 3, as neither of the said defendants has communicated with the plaintiff, there is no privity of contract between the plaintiff and either of the said defendants, and no threat has been held out by either of the said defendants to any other defendant in the present case, and
- (iii) the cause of action of the plaintiff, *vis-à-vis* each of the hotels Defendants 4 to 8, relates to the clause, in the contract executed with that particular hotel, requiring the plaintiff to obtain a license from Novex, or the other holder of copyright in the recordings which are to be played in the festivities.

**208.** “Cause of action”, it is trite, denotes the bundle of facts which a plaintiff would be required to prove in order to obtain relief against the defendants. The bundle of facts would undoubtedly include the event that the plaintiff is intending to organise and conduct at the venue, as well as the individual contract with the particular hotel in



question. Each such grievance/cause of action is *vis-à-vis* that particular hotel. As such, the present case does not satisfy the criteria of applicability of all causes of action to all the defendants were being joined together in the suit.

**209.** Let us view the case in perspective:

(i) Novex wrote to Marriott (Defendant 6), informing Marriott that, if it allowed its premises to be used for playing recordings, in which Novex held copyright, without requiring NOC/license to be taken from Novex prior thereto, both Marriott as well as the person playing the recording would be guilty of copyright infringement, and would be liable to be prosecuted therefor. A threat of liability and legal proceedings was, therefore, extended by Novex to Marriott.

(ii) Marriott, in its contract with the plaintiff, therefore, included a clause requiring the plaintiff to obtain NOC/license from Novex before playing recordings in which Novex held copyright. The plaintiff is aggrieved by the imposition of this condition.

(iii) The letter dated 14<sup>th</sup> December 2020 from Novex to Marriott is the only communication which contains a threat of liability of legal proceedings on account of copyright infringement.

(iv) No such communications have been addressed either by Defendant 2 or Defendant 3. The pleading, to that effect, in the suit, is not substantiated by any material on record.

(v) Apart from Marriott, the plaintiff has referred only to the terms of the contract, with the plaintiff, of the Taj Mahal Palace hotel in Jaipur, ITC Hotels and Shangri-La's Eros Hotel. While these communications also require the plaintiff to obtain NOC/license from Defendants 1 to 3, for recordings in which they held copyright, there is nothing, in the said communications from the Taj Mahal Palace hotel, ITC Hotels or Shangri-La, to indicate that the condition has been incorporated at the instance of Defendants 1 to 3.

(vi) The plaintiff, therefore, has actually no cause of action against Defendants 2 and 3. Any cause of action, even if it existed, is not common with the cause of action vis-à-vis Defendant 1. Even vis-à-vis Defendant 1, the plaintiff's grievance is essentially against Marriott.

(vii) So far as Defendants 4 to 7 are concerned, therefore, what the plaintiff seeks to obtain is, in fact, nothing less than a modification of the contractual stipulation subject to which the said Defendants have agreed to contract with the plaintiff. There is no provision, in the Copyright Act, the CPC, or the Specific Relief Act, which empowers a Court to direct modification of the contractual terms imposed by Defendants 4 to 7, for allowing the plaintiff to use their venue for conducting wedding ceremonies.

(viii) Even assuming such a decree could be sought, the plaintiff would have to institute individual suits against each hotel, detailing the events in respect of which the plaintiff desires to play the recordings of Defendants 1 to 3 without obtaining any NOC/license from them. There can be no amalgamation, in one suit, of the claims of the plaintiff *vis-à-vis* all the hotels.

(ix) What, in essence, the plaintiff is seeking to obtain, through the medium of the present suit, is an advance ruling to the effect that the plaintiff can, at all venues and in perpetuity, organise wedding ceremonies – irrespective of their nature – in which the recordings of which Defendants 1 to 3 hold copyright would be played and communicated to the public, without obtaining any NOC or license from any of the said defendants. Such an advance ruling is being sought essentially on the basis of Section 52(1)(za) of the Copyright Act, read with the Explanation thereto.

(x) The law does not permit such an advance ruling to be sought, least of all by way of one consolidated suit. Worse, the suit does not even disclose the events that the plaintiff proposes to hold. There is no prayer, in the plaint, for enabling the plaintiff to conduct any particular identified wedding ceremony, in any of the impleaded hotels, without obtaining a license from Defendants 1 to 3.

(xi) That the present suit is merely an example of litigative adventurism which is further apparent from the fact that the

plaintiff has chosen not only to implead the individual hotels with respect to which communications have been placed on record, but the FHRAI itself, as Defendant 9, later renumbered Defendant 8. The only justification for impleading the FHRAI is an apprehension, expressed in the plaint that all hotels, across the country, would be including, in contracts executed with event management companies, a requirement of obtaining NOC/license from copyright holders of recordings proposed to be play in wedding ceremonies.

(xii) Section 52(1)(za) of the Copyright Act provides that the plaint, or communicating to the public, of recordings in *bona fide* religious ceremonies, would not amount to copyright infringement. The Explanation to Section 52(1)(za) deems marriage processions and social festivities associated with marriage to be religious ceremonies for the purposes of the clause. The statutory dispensation is, thus, clear.

(xiii) No suit can be filed, merely seeking a declaration, declaring the legal position which already stands declared in the statute. As to whether, in a particular case, the benefit of Section 52(1)(za), all the Explanation thereto, would be available, has to be determined on the basis of the facts of that case.

**210.** The present suit is, therefore, prima facie nothing less than and ingenious short cut, whereby the plaintiff is seeking to obtain an omnibus advance ruling, qua any and every wedding ceremony to be held in any and every venue in the country. A declaration of the law, and what the plaintiff perceives to be the legal position is, therefore,

being sought even without the support of any factual foundation. In any event, Section 52(1)(za) does not justify the seeking of any such omnibus declaration of the law.

XI. Order II Rule 2(1) of the CPC

**211.** One may also, in this context, reference to Order II Rule 2(1)<sup>88</sup> of the CPC, which requires every suit to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Apropos this provision, the Supreme Court, in *A.B.C. Laminiart Pvt Ltd v. A.P. Agencies*<sup>89</sup>, defined “cause of action” thus:

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

All the material facts on which the cause of action, in respect of which relief is sought in the suit have, therefore, necessarily to be pleaded in the plaint. Among the facts which the plaintiff would, therefore, had to plead, in order to obtain a decree of declaration as to the necessity of procuring a license/NOC from the holders of in the recordings

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<sup>88</sup> 2. **Suit to include the whole claim.** –

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

<sup>89</sup> (1989) 2 SCC 163

which are to be played in a wedding ceremony would, therefore, include the nature of the ceremony itself, apart from circumstances attending the said ceremony. Given the peculiar wording of Section 52(1)(za) of the Copyright act, the plaintiff would additionally have to plead the circumstances which would go to indicate that the ceremony in question can be regarded as a “social festivity associated with the marriage” and that it is *bona fide*.

**212.** In the present case, the plaintiff is seeking a declaration of the law, without pleading any of these facts. No suit, merely seeking a declaration of the legal position, without specifically pleading the material facts on the basis of which the cause of action, which prompted the plaintiff to see such a declaration, can lie, in view of Order II Rule 2(1) of the CPC.

### **Conclusion**

**213.** In the result, I am of the opinion that

- (i) the suit, as filed, infracts Order I Rule 3, Order II Rule 2(1) and Order II Rule 3 of the CPC, and
- (ii) the reliefs sought in the suit cannot be sought either under Section 60 of the Copyright Act or Section 34 of the Specific Relief Act, and
- (iii) Section 52(1)(za) of the Copyright Act, too, cannot justify the omnibus nature of the prayers sought in the suit.

**214.** No interim relief, as sought, can, therefore, be granted.

**215.** IA 2289/2021 is, therefore, dismissed.

**216.** In view of the above findings, the plaintiff is also directed to show cause as to why the suit be not dismissed in terms of Order VII Rule 11 of the CPC. Let cause be shown within four weeks, on affidavit. Response thereto, if any, be filed by the defendants within 4 weeks thereof and rejoinder within 2 weeks thereafter.

**217.** List for hearing on the above aspect on 21<sup>st</sup> August 2023.

**MAY 12, 2023**

Ar/kr

**C.HARI SHANKAR, J**

