Super Cassettes Industries Ltd v. M/S Shreya Broadcasting Pvt Ltd, CS (OS) 1372/2009

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Super Cassettes is engaged in the business of manufacturing and marketing audio cassettes, video cassettes, compact discs (CDs), etc. and has a vast repertoire of cinematograph films, musical works and sound recordings etc. Super Cassettes acquires copyright in all the literary, musical and other works which it commissions and manages, through assignments from the authors or other prior owners of copyright in the same and is also the first owner of the copyright of the work which it produces. Team Anand and Anand represented the plaintiff (**Super Cassettes Industries Ltd)** in a suit for infringement of the plaintiff's copyright, seeking permanent injunction against the defendant **M/S Shreya Broadcasting Pvt Ltd** restraining them from recording, distributing, broadcasting or otherwise publishing or in any other way exploiting any films, sound recordings, music, lyrics, in the plaintiff's repertoire or doing any other act that would lead to infringement of plaintiff's copyright. It was alleged that though the defendant calls itself a news channel, it was engaging in unauthorised use of the plaintiff's copyright works for the purpose of entertainment and increasing viewership. Vide order dated 25-02-2019 the suit was decreed in favour of the plaintiff along with the following awards:

- A permanent injunction as per the prayer of the plaint was granted against the defendant.
- Compensatory damages to the tune of Rs. 21 lakhs was awarded in favour of the plaintiff.
- Cost of Rs. 22,900/- which was deposited as court fees was also awarded against the defendant.

This case is pertinent due to the following bearings and issues:

1. **Whether the suit is not maintainable for non-compliance with Section 61 of the Copyright Act?**

- A perusal of Section 61 (1) of the Copyright Act shows that it is a licensee who is required to implead the owner of the copyright as a defendant. The section is not applicable to an assignee.
- In view of the detailed assignment in favour of the plaintiff, the plaintiff is the deemed owner of the copyright work with the right to grant licenses.
- Thus, the suit cannot be dismissed under Section 61.

2. **Whether the defendant's use of the plaintiff's copyright works falls under Section 39 of the Copyright Act?**

- Defendant claimed that since the excerpts of the plaintiff's copyright work were used for reporting current events and for review in the process of dissemination of the news there is no infringement of the copyright of the plaintiff.

- Held, that from the details of time of the recordings/films/album, it is apparent that the defendant cannot claim the benefit of Clause (b) of Section 39 of the Copyright Act.

3. **Whether the defendant's use of the plaintiff's copyright works falls under Section 52 (1) (a) (ii) of the Copyright Act?**

- Held, that from the CDs of infringing recordings it cannot be held that the use of the copyright work of the plaintiff by the defendant was for the criticism or review of the copyright work. The same was to enhance the programmes of the defendant.

4. **Whether the defendant's act of broadcasting the plaintiff's repertoire on their channel without licence amounts to infringement of the plaintiff's copyright?**

- Plaintiff having proved that it is the assignee of the copyright and having proved that the defendant was broadcasting the copyrighted works of the plaintiff without any license, the same amounts to infringement of the plaintiff's copyright.
- Thus, entitled to a permanent injunction.

5. **Whether the plaintiff is entitled to damages and, if so, to what extent?**

- The defendant, relying upon *Indian Television Yashraj Films Pvt. Ltd.* argued that the alleged infringement being trivial, the plaintiff is not entitled to damages.
- It was held that the *Indian Television (supra)* laid down the factors to determine de minimis as: (i) the size and type of the harm; (ii) the cost of adjudication; (iii) the purpose of the violated legal obligation; (iv) the effect on the legal rights of third parties and (v) the intent of the wrongdoer.
- A perusal of the cue sheets, capturing recordings show at least 500 minutes of infringement. Thus it cannot be held that based on the principle of de minimis no compensatory damage be awarded to the plaintiff. The plaintiff has sought compensatory damage to the tune of ₹21,00,600/- which is reasonable and is thus awarded.
- No punitive damages.

The Anand and Anand team comprised of Pravin Anand, Prachi Agarwal and Mrinali Menon.

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