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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**APPEAL NO. 150 OF 2009
IN
SUIT NO. 2124 OF 2007**

Music Choice India Private Limited,]
Having its registered office at C-1/1520,]
Vasant Kunj, New Delhi – 110 070.] Appellant

V/s.

Phonographic Performance Limited,]
Having its registered office at Cresnet Towers,]
7th Floor, B-68, Veera Estate, Off. New Link]
Road, Andheri (E), Mumbai – 400 053.] Respondent

Mr. Janak Dwarkadas, Sr. Counsel a/w Mr. H.W. Kane, Mr. Rahul Kadam, Mr. Hiren Kamod for the Appellant

Dr. Virendra Tulzapurkar, Sr. Counsel, Mr. Amit Jamsandekar i/b M/s. Bilwala & Co for the Respondent

**CORAM : B.H. MARLAPALLE &
SMT. V.K. TAHILRAMANI, JJ**

**RESERVED ON : 15th January, 2010
PRONOUNCED ON : 22nd January, 2010**

ORAL JUDGMENT: [PER B.H.MARALAPALLE, J.]

1. Heard Shri. Dwarkadas, learned Senior Counsel for the Appellant /

Plaintiff with Mr. H.W. Kane, Mr. Rahul Kadam, Mr. Hiren Kamod and Dr. Tulzapurkar, learned Senior Counsel with Mr. Amit Jamsandekar.

2. Admit.
3. Respondent waives service.
4. By consent of the parties, paper book dispensed with and the Appeal has been heard finally.
5. This Appeal arises from the common Judgment and Order dated 22.01.2009 rendered in Suit Nos. 2124 of 2007 and 2283 of 2007 wherein it is held that the trial Court had no jurisdiction to try the suit and the suits were dismissed for want of Court's inherent jurisdiction. The Plaintiffs were directed to proceed before the Copyright Board with liberty to make such application as deemed fit for expedition or for grant of interim relief in their pending application. It was left to the Board to consider such an application, if made, on merits.
6. The Appellant had filed suit No. 2124 of 2007. The Appellant is a private limited company incorporated under the provisions of the Companies Act, 1956 and its main object is to carry on the business of receiving, producing, acquiring, broadcasting, communicating,

telecasting various entertainment and entertainment related content and programmes. The Defendant is a company incorporated under the Companies Act, 1956 and has been registered as a Collecting Society under Section 33(3) of the Copyright Act, 1957 ('The Act' for short) to carry on the business of issuing licenses inter alia to broadcast / communicate to the public sound recordings.

7. The Plaintiff proposes to launch a 24 hour music channel in India, playing only music embodied in sound recordings accompanied by static graphics displayed on the screen via the local operators of Satellite, Cable and Internet platforms. It made an application to the Ministry of Information and Broadcasting. The Plaintiff claims to have obtained license under section 30 of the Act. It negotiated with the Defendant for broadcasting the sound recording in its repertoire and claims to have such a written proposal to the Defendant on 04.07.2006. It appears that the Defendant, via email dated 07.07.2006 informed the Plaintiff of offering it via DTH platform by charging royalty fee based on certain percentage of the end user price i.e price paid by the subscriber. The Plaintiff did not respond till March, 2007 and on 30.03.2007, it submitted a

proposal to the Defendant to pay on the basis of revenue. By its letter dated 12.04.2007, the Plaintiff pointed out that the demand for payment of royalty at the rate of 50% of the end user price was very high and it offered royalty for the first year at 4% of Pro-rated Net Profit with a cap of 7% of Pro-rated Net Profits. There was no response from the Defendant and therefore, on 04.07.2009, the Plaintiff made an application under section 31(1)(b) of the Act to the Copyright Board (the 'Board' for short) at New Delhi for a compulsory license to communicate the sound recording in the repertoire of the Defendant to the public by broadcast and subject to payment to the Defendant on such compensation and on such terms and conditions as the Copyright Board would consider reasonable, just and equitable.

8. On 19.07.2007, the Plaintiff filed a suit on the original side of this Court and prayed for the following reliefs :-

- a) That it may be ordered and declared by this Hon'ble Court that the Plaintiff is entitled to a license to broadcast the present and future sound recording of the Defendant on payment to the Defendant such royalty and / or compensation and subject to such terms and conditions as the Copyright Board may determine upon the Plaintiff's applications dated 4th July, 2007 and / or such application

that may be made by the Plaintiff from time to time for compulsory license or otherwise.

- b) That the Defendant, its directors, servants and agents be restrained by a permanent order and injunction of this Hon'ble Court from interfering with the Plaintiff's broadcast of the present and future sound recordings of the Defendant, upon the Plaintiff undertaking to this Hon'ble Court to pay to the Defendant the amount of royalty or compensation and agreeing to abide by the terms and conditions as may be determined by the Copyright Board on the Plaintiff's application dated 4th July, 2007 and / or such other application that may be made by the Plaintiff from time to time for compulsory license or otherwise;
- c) That pending the hearing and final disposal of the Suit the Defendant, its directors, servants and agents be restrained, by an order and injunction of this Hon'ble Court from interfering with the Plaintiff's broadcast of the present and future sound recordings of the Defendant upon payment of royalty and on terms and conditions contained in the Plaintiff's letter dated 12th April, 2007 being Exhibit "C" to the plaint or such reasonable interim royalty fee as may be determined by this Hon'ble Court.

9. On 04.09.2008, the learned Trial Judge passed an ad-interim order in Notice of Motion No. 3651 of 2007 and prior to the said date i.e on 04.08.2008, the following preliminary issue was framed :

- 1) Whether this Court has jurisdiction to try and decide

the suit pertaining to the fixation of royalty by the statutory board under section 31 of the Copyright Act?

By the ad-interim order, certain arrangement was made to meet the ends of justice. It is stated across the Bar that as of now, the Plaintiff has not started broadcasting. When the suit came up before the trial court on 22.01.2009, the preliminary issue was re-cast as under:-

“Whether this Court has inherent jurisdiction to try the suit?”

10. After hearing all the parties concerned, the learned Trial Judge concluded her findings that the Civil Court’s jurisdiction to grant any declaration or injunction as prayed for subject to the statutory determination is impliedly barred as the relief prayed for would have to be decided by the Board under section 31(1)(b) of the Act. The Act being a self sufficient code, jurisdiction of the Civil Court was impliedly barred and the relief prayed for could be exclusively granted by the Board. The appellant is aggrieved by the said order.
- 11.As per Section 2(ff) of the Act, “communication to the public” means making any work available or being seen or heard or otherwise enjoyed by the public directly or by any means of display of diffusion other than by issuing copies of such work regardless of

whether any member of the public actually sees, hears or otherwise enjoys the work so made available.”

As per Section 2(ff)(a), “Composer” in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation”

“Copyright society” means a society registered under sub-section (3) of section 33.

“Musical work” means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music.

“Sound recording” means a recording of sound from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

“Work” means any of the following works namely :-

- (i) a literary, dramatic, musical or artistic work
- (ii) a cinematograph film
- (iii) A sound recording.

12. Section 6 of the Act provides that certain disputes shall be referred to the Board constituted under section 11 which decision shall be final. Under section 11, the Central Government shall constitute a Board to be called Copyright Board which shall consist of a Chairman and not less than two nor more than fourteen other members. The Chairman and other members of the Board shall hold office for such period and on such terms and conditions as may be prescribed. The Chairman of the Board shall be a person who is, or has been, a Judge of a High Court or is qualified for appointment as a Judge of a High Court.

Section 12 deals with the powers and procedure of Board. It may exercise and discharge its powers and functions through Benches constituted by its Chairman from amongst its members, each Bench consisting of not less than three members. If there is a difference of opinion among the members of the Board or any Bench thereof in respect of any matter coming before it for decision under this Act, the opinion of the majority shall prevail and whereas there is no such majority, the opinion of the Chairman shall prevail. No member of the Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest. The Board shall be

deemed to be a Civil Court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.

As per Section 13 of the Act, copyright shall subsist through out India in the following classes of works, that is to say –

- (a) original literary, dramatic, musical and artistic works:
- (b) cinematograph films; and
- (c) sound recording

Copyright shall not subsist in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

As per section 14, Copyright means exclusive right, subject to the provisions of this Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely :-

- (a) in the case of a literary, dramatic or musical work, not being a computer programme, -
 - (i) to reproduce the work in any material from including the storing of it in any medium by electronic means ;
 - (ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clause (i) to (vi);

(b) in the case of a computer programme,

(i) to do any of the acts specified in clause (a);

[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

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

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

(i) to reproduce the work in any material form including depiction in the dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film, -

(i) to make a copy of the film including a photograph of any image forming part thereof;

(ii) to sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the film to the public;

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

(i) to make any other sound recording embodying it;

(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;

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

As per section 16, no person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force. Section 18 states that the owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations

and either for the whole term of the copyright or any part thereof whereas section 19 states the mode of assignment. Section 19A deals with respect to assignment of copyright.

13. Section 30 provides for grant of voluntary license by the owner of copyright whereas section 31 deals with compulsory license in works withheld from public. Section 33 provides for registration of copyright society and the Central Government has the powers to cancel the registration of a society if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners of rights concerned. Section 44 provides for a register of copyrights to be kept at the Copyright Office and in the prescribed form and correction of entries therein is required to be carried out from time to time as per Section 49.

Chapter XI deals with infringement of Copyright. Chapter XIII deals with offences and Chapter XIV provides for Appeals.

As per Section 72, any person aggrieved by any final decision or order of the Register of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board. Any person aggrieved by any final decision or order of the Copyright Board, not being a decision or order made in any appeal under sub-section

(1), may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the Appellant actually and voluntarily resides or carried on business or personally works for gain.

Section 73 deals with the procedure for appeals whereas section 74 of the Act states that the register of Copyrights and Copyright Board to possess certain powers of a Civil Court when trying a suit under the Code of Civil Procedure in respect of the following matters, namely :-

1. summoning and enforcing the attendance of any person and examining him on oath;
2. requiring the discovery and production of any documents :
3. receiving evidence on affidavits;
4. issuing commissions for the examination of witnesses or documents;
5. requisitioning any public record or copy thereof from any Court or office;
6. Any other matter which may be prescribed.

14. Section 31(1)(b) which is relevant for our consideration reads as under:

“If at any time during the term of copyright in any Indian work

which has been published or performed in public, a complaint is made to the Copyright Board that the owner of the copyright in the work –

has refused to allow communication to the public by [broadcast] of such work or in the case of a [sound recording] the work recorded in such [sound recording] on terms which the complainant considers reasonable, the Copyright Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyright to grant to the complainant a license to republish the work, perform the work in public or communicate the work to the public by [broadcast], as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine; and thereupon the Register of Copyrights shall grant the license to the complainant in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed."

Section 51 deals with infringement of Copyright which reads as under:

"Copyright in a work shall be deemed to be infringed -

(a) when any person, without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license 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 copyrights 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

(v) 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.

15.It was submitted by Shri. Dwarkadas that the Plaintiff's application dated 04.07.2007 is pending before the Copyright Board for a

compulsory license under section 31(1)(b) of the Act. The Board meets once or twice in a year and during the last more than two years, the application submitted by the Plaintiff has not been decided. The Plaintiff has made reasonable offer of payment and royalty and demand made by the Defendant is exorbitantly high and unrealistic. It is for the Board to fix a reasonable royalty amount and other terms and conditions while granting a license under section 31(1)(b) of the Act. The Act has recognized the concept of involuntary license and has statutorily authorized the Board to fix a reasonable royalty and other terms and conditions on an application made for compulsory license. The Act recognizes that the owner of the Copyright is not entitled to withhold the license as this is considered to be against the public interest and provides for right to obtain a compulsory license from the Board. The Plaintiff acknowledges the right of the Defendant and he is ready and willing to pay to the Defendant at the rates that are reasonable. As per the Plaintiff, it has been placed in an entirely unfair situation though it had acted in a bonafide manner by, at the first instance, making an offer to the Defendant and subsequently by submitting an application to the Board for a compulsory license.

In the meanwhile, it has taken substantial efforts and incurred huge expenditure in its proposed venture and also established system for broadcasting music which is lying idle as its application has not yet been decided by the Board. The Plaintiff undertakes to pay to the Defendant such royalty as may be fixed by the Board pursuant to its application dated 04.07.2007 for a compulsory license. As per the Plaintiff, it has a right to broadcast sound recording in the repertoire of the Defendant on payment to it of such royalty and / or compensation and subject to terms and conditions as the Board may determine upon the pending applications and in the meanwhile, the Plaintiff must be allowed to broadcast on such undertakings. Once such an undertaking has been submitted to the Board to pay to the Defendant amount of royalty or compensation and agreeing to abide by the terms and conditions as may be determined by the Board on its application dated 04.07.2007, the Defendant, its directors, servants and agents ought to be restrained by a permanent order of injunction from interfering with the Plaintiff's broadcasting of sound recording of the Defendant's members.

16. Shri. Dwarkadas relied upon the following observations of the

Supreme Court in the case of Entertainment Network (India) Limited & Ors. Vs. Super Cassette Industries Ltd, 2008(5)

Bom.C.R. 719:-

“When the owner of a copyright or the copyright society exercises monopoly in it, then the bargaining power of an owner of a copyright and the proposed license may not be same. When an offer is made by an owner of a copyright for grant of licence, the same may not have anything to do with any term or condition which is wholly alien or foreign therefore. An unreasonable demand if acceded to, becomes an unconstitutional contract which for all intent and purport may amount to refusal to allow communication to the public work recorded in sound recording.....

The word ‘public’ must be read to mean public of all parts of India and not only a particular part thereof. If any other meaning is assigned, the terms ‘on terms which the complainant considers reasonable’ would lose all significance. The very fact that refusal to allow communication on terms which the complainant considers reasonable have been used by the Parliament indicate that unreasonable terms would amount to refusal. It is in that sense the expression ‘has refused’ cannot be given a meaning of outright rejection or denial by the copyright owner.....

What would be reasonable for one may not be held to be reasonable for the other. The principle can be determined in a given situation.

We wish the statute would have been clear and explicit. But only because it is not, the courts cannot fold its hands and express its helplessness.

When such a complaint is made, it confers the jurisdiction upon the Board. It may ultimately allow or reject the complaint but it cannot be said that the complaint itself is not maintainable.

This scheme shows that a copyright owner has complete freedom to enjoy the fruits of his labour by earning an agreed fee or royalty through the issuance of licenses. Hence, the owner of a copyright has full freedom to enjoy the fruits of his work by earning an agreed fee or royalty through the issue of licenses. But, this right, to repeat, is not absolute. It is subject to right of others to obtain compulsory license as also the terms on which such license can be granted.....”

It was submitted by Shri. Dwarkadas on the basis of the above observations that the right to broadcast of work recorded in sound recording has been recognized by the Supreme Court and therefore, once the Plaintiff has furnished an undertaking before the trial court to pay the royalty amount as may be fixed by the Board, in the pending application, the trial court has jurisdiction to entertain the suit and decree it for the reliefs prayed. Any other interpretation, as per Shri. Dwarkadas would render the scheme of the Act redundant and the above observations made by the Supreme Court in the above case would be ineffective and meaningless. He also submitted that even on

the point of equity, such a relief could be granted by the Civil Court and it is not necessary for the Applicant to wait for a final outcome from the Board which takes years together to decide the complaint so as to grant compulsory license. In the opinion of Shri. Dwarkadas, the suit filed by the Plaintiff is maintainable and the trial Court has the jurisdiction to grant the reliefs prayed for.

17. Dr. Tulzapurkar, learned Senior Counsel appearing for the Defendant while supporting the view taken by the trial court submitted that the relief sought for by the Plaintiff was nothing sort of a compulsory license under section 31(1)(b) of the Act. The Act by itself has vested such exclusive powers with the Board. It was submitted that the Act is a self sufficient code and has provided for appeals against the orders of the Board and also for penal provisions in case of Copyright violation, and therefore, it being a special statute, the jurisdiction of the Civil Court is impliedly barred to entertain the suit for the reliefs prayed for. As per Dr. Tulzapurkar, the relief which was required to be considered and granted i.e of compulsory license is sought to be obtained by filing a suit and thus, frustrate the scheme of the Act. It was pointed out by Dr. Tulzapurkar that on the question of jurisdiction, one must

always have regard to the substance of the matter and not to the form of the suit and he relied upon the following observations in the case of Church of North India V/s. Lavajibhai Ratanjibhai and Others, (2005) 10 Supreme Court 760:

“With a view to determine the question as regards exclusion of jurisdiction of the civil court in terms of the provisions of the Act, the Court has to consider what, in substance, and not merely in form, is the nature of the claim made in the suit and the underlying object in seeking the real relief therein.”

Dr. Tulzapurkar also relied upon the following observations made in the case of Firm Seth Radha Kishan (deceased) represented by Hari Kishan and others V/s. Administrator Municipal Committee, Ludhiana, AIR 1963 Supreme Court 1547:

“Under S. 9 of the Code of Civil Procedure the Court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication, can bar the jurisdiction of civil Courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil Courts. The statute may specifically provide for ousting the jurisdiction of civil Courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the

remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the Civil Court's jurisdiction is not completely ousted. A suit in a civil Court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions."

18. In the case of Phonographic Performance Ltd & Ors V/s. Music Broadcast (P) Ltd and Ors, 2004(29) PTC 282 (Bom) (DB), a Division Bench of this Court had an occasion to examine the scheme of the Act and on the interpretation of section 31(1)(b) of the Act, it has held:-

".....the Legislature has made its intention of dealing with the mode of communication namely broadcast differently and therefore, in our opinion, as the words of the provisions are clear, there is no question of importing the concept of the refusal resulting in withholding of the work from the public into the field of broadcast also, as the intention of the Legislature in that regard is absolutely clear. Perusal of the provisions of subsection (1) of section 31 further shows that the complainant in relation to cases covered by both clauses (a) and (b) of subsection (1) of section 31 is required to first approach the holder of the copyright for permission to republish or rebroadcast the

work and offer terms which he considers reasonable and if the permission is refused by the copyright holder, he can approach the Copyright Board. The Copyright Board then holds an inquiry to find out whether the grounds on which the copyright holder has refused permission are reasonable or not and if the Copyright Board finds that the reasons for refusal given by the copyright holder are not reasonable, then, it can decide to grant a license to the complainant.

It is thereafter, that the question of determination of compensation arises and then the Copyright Board has to hold an inquiry as to what should be the amount of compensation payable by the complainant to the copyright holder as also other terms and conditions on which the license is to be granted.”

Dr. Tulzapurkar also referred to the general principles of copyright by reading out the following provisions from the book titled as “Law of Copyright and Industrial Designs”.

“1.11 General principles of copyright The most basis for protection under Copyright Law rests in the Eight Commandment : “Thou Shall Not Steal” The law does not permit one to appropriate to himself what has been produced by the labour, skill and capital of another. This is the very foundation and philosophy of Copyright Law.

1.12 The general principles of copyright is reflected in Art. 27 of the Universal Declaration of Human Rights :

(1) Every one has the right freely to participate in the cultural life of the community to enjoy the arts and share in scientific

advancement and its benefits.

(2) Every one has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”

19. In the instant case, the Plaintiff has already filed an application / complaint under Section 31(1)(b) of the Act and thus, invoked the jurisdiction of the Board for grant of compulsory license. No doubt, the said application is pending may be for the last more than two years. However, it is the exclusive jurisdiction of the Board to grant such a license. It is well settled, unless such a license is granted, the Plaintiff has no right to broadcast in the repertoire of the Defendant and if the Plaintiff does so without obtaining the license, such an act would fall within the ambit of Section 51 of the Act i.e infringement of the Copyright and consequently, it would be an offence under section 63 of the Act. Any person knowingly infringes or abets the infringement of copyright in a work shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall be less than fifty thousand rupees but which may extend to two lakh rupees. The Act is a special statute and it is a self sufficient piece of legislation. Any order passed by the Board

under section 31(1)(b) is appealable before this Court under section 72 therein. The Board is headed by a retired Judge of the High Court or a person eligible to be appointed as a Judge of the High Court. The Bench of the Board consisting at least three members and in case of different opinion, a view of majority of the members would prevail. What is prayed by the Plaintiff in the suit filed by it before the learned Trial Judge is nothing short of compulsory license within the meaning of section 31(1)(b) of the Act while its application for the very same purpose is pending before the Board, a statutory authority. Thus, the relief prayed for in the suit is impliedly a relief for grant of compulsory license which authority is exclusively vested with the Board. Such a relief cannot be granted by the Civil Court and therefore, in our opinion the learned Trial Judge was right in holding that the suit was not maintainable, as this Court on its original side lacks jurisdiction. The jurisdiction exclusively lies with the Board. At the same time, contentions of the Plaintiff that it has a vested right or a statutory right for a compulsory license cannot be accepted. It has a right to apply for a license under Section 31(1)(b) and in a given case, right to broadcast culminates only after such a license is granted. In a

way, it is a contractual right regulated by a statutory authority and by entertaining the suit for the relief prayed for, undoubtedly, the provisions of Chapter IX, XI and XIII and other relevant provisions of the Act would be frustrated. The contentions that the Defendant has been dictating terms or it cannot be allowed to dictate the terms and therefore, the law must step in to the rescue of the Plaintiff cannot be a ground to entertain the suit and the only remedy available to the Plaintiff as per the scheme of the Act is to prosecute its application pending before the Board for a compulsory license. It cannot file a suit for any interim arrangements pending in such an application and the Civil Court will have no jurisdiction to entertain such applications. Seeking such a remedy is to by pass regulatory provisions as well as the penal provisions as are set out in Chapter XI and XIII of the Act and the Civil Court cannot have such a jurisdiction to grant something which would frustrate the provisions of a statute. The observations made by the Apex Court in the case of Entertainment Network (India) Limited (Supra) and as reproduced herein above cannot be read as to create a vested right in favour of the Plaintiff or similarly placed the Applicant / Complainant to claim an interim compulsory license by filing a suit

before the Civil Court. What is not provided by a Statute which is a complete code of itself, cannot be read in the judgment of the Supreme Court. The jurisdiction of the Civil Court cannot be allowed to be invoked to short circuit the statutory process of licensing and therefore, the Court would lack in its jurisdiction to entertain the suit. In that view of the matter, the learned trial Judge has stated that the relief prayed in the suit was innocuous or may be it is innovative. We, therefore, do not find any fault in the said observations.

20. The learned Trial Judge in the impugned judgment has also held that the Plaintiff is not prevented from filing an application for interim relief pending its application of compulsory license and reliance in that regard has been placed on the judgment of the Supreme Court in case of *The Management Hotel Imperial, New Delhi Vs. Hotel Workers' Union*, **AIR 1959 SC 1342**. Shri. Dwarkadas may be justified in expressing his doubts on the correctness of the said observations of the learned Trial Judge. It appears that the learned Trial Judge intended to suggest that the scheme of the Act does not bar filing of such an application before the Board. Be that as it may, we refrain from expressing any

opinion on the issue whether an application for interim relief can be filed and entertained by the Copyright Board.

21. For the reasons set out herein above, this Appeal must fail and the same is hereby dismissed. We confirm the impugned order passed by the learned trial court to the extent it holds that it does not have jurisdiction to try the suit and the suit is dismissed for want of jurisdiction.

22. This order does not prevent the Plaintiff from applying to the Board for expeditious decision on its application pending for compulsory license under Section 31(1)(b) of the Act.

23. Parties to bear their own costs.

[SMT. V.K. TAHILRAMANI, J.]

[B.H. MARLAPALLE, J.]