

(2008) 09 CAL CK 0019

Calcutta High Court

Case No: A.P.O. No. 109 of 2006 and C.S. No. 90 of 2006

Radio Today Broadcasting Ltd.

APPELLANT

Vs

Indian Performing Rights Society
Ltd. and Others

RESPONDENT

Date of Decision: Sept. 26, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8
- Copyright Act, 1957 - Section 33

Citation: (2009) 39 PTC 431

Hon'ble Judges: Pinaki Chandra Ghose, J; Biswanath Somadder, J

Bench: Division Bench

Advocate: S.N. Mookherjee, Ranjan Bachwat and S. Bajoria, for the Appellant; P.C. Sen, S.K. Kapur Sr. Advs., Sayantan Basu, Phiroze Edidgi, V. Banerjee, R. Bhattacharjee, Sayan Roy Chowdhury for the Respondent No. 1, Pratap Chatterjee Abhrajit Mitra, Ravi Kapur, Ashok Bose for the Respondent No. 2, Ratnako Anerjee, S.K. Bajoria, Srinjay Sengupta, for the Respondent Nos. 3, 4 and 5. Prithviraj Sinha, for the Respondent No. 6, for the Respondent

Judgement

Biswanath Somadder, J.

The present appeal arises out of a judgment and order dated 26th April, 2006, passed by the Hon'ble First Court, whereby it refused to pass any order and was pleased to dismiss the Plaintiffs interlocutory application for injunction, wherein the following principal prayers were made:

- (a) The Respondent, its men, servants, agents and/or assigns be restrained from compelling the Petitioner to obtain any licence or demanding any payment from the Petitioner;
- (b) The Respondent be restrained from making threats of initiating proceedings against alleged infringement and/or threatened infringement of alleged copy right;

(c) The Respondent, its men, servants, agents and/or assigns be restrained from initiating any proceedings in furtherance of its aforesaid and other threats against the Petitioner and other broadcasters similarly situate;

....

2. The facts of the case, in brief, are stated hereinbelow:

(i) The Plaintiff- Radio Today Broadcasting Ltd. (hereinafter referred to as "RTB") instituted the suit against the Defendant- Indian Performing Rights Society Ltd. (hereinafter referred to as "IPRS") praying, inter alia, for the following reliefs:

(a) A declaration that the Defendant and/or its members have no right to issue licences or claim payment of licence fees in relation to the broadcasting of works embodied in sound recordings administered by PPL and other music companies;

(b) Declaration that the Defendant and/or its members have no copyright in respect of any work comprising of and/or underlying the sound recordings in relation to which licences are granted by phonographic performance Ltd. and other music companies;

(c) Declaration that the Plaintiff is not obliged to obtain licence from the Defendant or to make payment of any fees to the Defendant in relation to works broadcast by the Plaintiff;

(d) Declaration that the threats made by the Defendant to the representatives of the Plaintiff is wrongful;

(e) Declaration that the Plaintiff is not and will not be infringing any legal right of the Defendant;

(f) A Decree of perpetual injunction restraining the Defendant and/or its members from making any wrongful threats or initiating proceedings against the Plaintiffs;

(g) A Decree of perpetual injunction restraining the Defendant and/or its members from in any way or manner claiming any payment from the Plaintiff for the proposed broadcasting of sound recordings administered by Phonographic Performance Ltd. and other recording companies;

(h) A Decree of permanent injunction restraining the Defendant and/or its members, servants, agents and/or assigns from initiating any proceeding against the Plaintiff and/or its officers in relation to the matters which are the subject matter of the instant suit;

(ii) RTB also prayed for leave under Order 1 Rule 8 of the Code of Civil Procedure, 1908 and Clause 12 of the Letters Patent.

(iii) The case made out by RTB in its plaint was that it had incurred substantial expenditure of around Rs. 30.5 crores towards setting up of radio stations in seven

cities, including Kolkata. The radio stations, according to RTB, had been set up and broadcast is to commence.

(iv) RTB has contended that IPRS, being a copyright society registered u/s 33 of the Copyright Act, 1957, was claiming that it had exclusive right to grant licence on behalf of lyricists, composers, etc. and without such licence sound recordings cannot be broadcast by any radio station and on that basis it had been issuing threats to companies owing radio stations intending to commence their business of broadcasting.

(v) It was on this factual backdrop that the Plaintiff instituted the instant suit for the principal prayers, as quoted above.

(vi) Pursuant to grant of leave to the Plaintiff-RTB under Order 1 Rule 8 of the Code of Civil Procedure, 1908 and after advertisement, six companies were added as parties to the suit and they are also Respondents in the instant appeal.

(vii) At the time of moving the interlocutory application ex parte, for grant of injunction the Plaintiff- RTB, inter alia, contended as follows:

If notice of the instant application be given the Respondent and its officers will take wrongful steps to act in furtherance of their threats and otherwise act to the detriment of the Petitioner and other persons who have been granted licences to make broadcast. Your Petitioner have come to learn on 8th April, 2006 that the Respondent is taking steps to file proceedings against the Petitioner and its officers in an attempt to harass and pressurize them into acceding to the wrongful and unjust demands of the Respondent. Accordingly, there is great urgency in the matter.

(viii) The Respondent, IPRS, however, intervened through Counsel and on 12th April, 2006 the following order was passed by the Hon"ble First Court:

THE COURT: This application is being moved by Mr. Banerjee with the leave of this Court and in course of hearing Mr. P.C. Sen, learned Senior Advocate instructed by Mr. Firoze Edulji, learned Advocate appears on behalf of the Defendant and submits that his client has not taken any legal action pursuant to the threat given. Therefore, he assures this Court his client will not initiate or cause to be initiated any criminal proceeding against the Petitioner till 20th April, 2006. The matter will appear as a "New Motion" on 19th April, 2006.

This order is passed without prejudice to the rights and contentions of the parties.

All parties are to act on a signed xerox copy of this order on the usual undertaking.

(ix) Subsequently, a suit, being C.S. No. 632 of 2006, was filed before the Delhi High Court by IPRS against the Plaintiff- RTB, inter alia, claiming for damages for infringement of its copyright. In the said suit an interlocutory application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 was also filed, wherein

IPRS inter alia prayed for an injunction restraining RTB from commencing and/or causing broadcast to be made without obtaining a licence from it.

(x) Before the Delhi High Court it was contended on behalf of RTB that in so far as broadcasting was concerned, licence was yet to be issued by the Government of India, though the letter of intent had been issued in January, 2006 and the formalities to be completed before the broadcast started would take about four months. It was further contended by RTB that there was immediate threat for which interim order would be required and in case it proposed to start broadcasting an advance intimation of at least fifteen (15) days would be given to the court with intimation to the Plaintiff (IPRS) so that consideration of the interlocutory application could, be taken up expeditiously in that eventuality, Based on the above submission of RTB, the Delhi High Court on 18th April, 2006 did not pass any interim order in respect of the interlocutory application filed by IPRS.

(xi) The Hon"ble First Court while passing the order impugned dismissing RTB's interlocutory application referred to the judgment of the Hon"ble Supreme Court in the case of [Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association and Others](#), and taking into consideration the proviso to section 60 of the Copyright Act, 1957, was of the prima facie view that IPRS was entitled to claim royalty and were legitimately entitled to threaten RTB on its refusal to pay such royalty and were also entitled to initiate proceeding by taking recourse to process of law to protect the interest of their members.

3. At the time of hearing of the appeal, the learned senior counsel appearing on behalf of the Appellant, took us to the facts of the case in detail and submitted that the Hon"ble First Court, despite noticing the law laid down by the Hon"ble Supreme Court in the Indian Performing Rights Society's case (supra) that a composer can claim copyright in his work only if there is an express agreement between him and the owner of the film preserving his right, held in the order impugned that IPRS was entitled to royalty from broadcasters unless it was shown that its members' rights, were expressly assigned in favour of members of Phonographic Performance Ltd. (hereinafter referred to as "PPL"). According to the learned senior counsel for the Appellant, this was wholly contrary to the judgment of the Hon"ble Supreme Court referred (supra) as well as the judgment of this High Court, in the case of [Eastern India Motion Pictures and Others Vs. Performing Right Society Ltd. and Others](#), . Referring to the paragraphs 17 and 18 of the plaint, learned senior counsel for the Appellant submitted that the Hon"ble First Court had been factually incorrect to observe that it was not the Plaintiffs case that the members of the IPRS did assign their rights to the producers. The learned senior counsel for the Appellant submitted that the specific case of the Plaintiff- RTB was that the lyricists and composers have no right over the music or lyrics as the same vest in the music producers and/or recording companies and the Hon"ble First Court had failed to notice the case made out by the Plaintiff-RTB.

4. It was further submitted by the learned senior counsel for the Appellant that the Respondent IPRS and its members did not have any copyright in sound recording in law and in the absence of any right in law over sound recordings generally, it could not claim royalty in respect of all sound recordings intended to be broadcast. Relying further on the judgment of the Hon"ble Supreme Court in Indian Performing Rights Society's case (supra), he submitted that the Respondent and/or its members can have a right in some works, only if the same had been specifically reserved in relation to individual songs/works under agreements entered into by them. He submitted that in the instant case, no such agreement had been disclosed, hence the Respondent IPRS had failed to disclose that they had retained rights over any works embodied in specific sound recordings.

5. Learned senior counsel for the Appellant also submitted that even assuming that the lyricists and composers had have preserved their rights by agreement, the same would, at the highest, be restricted to "public performance rights" in relation to which no royalty could be claimed from radio stations as they are not involved in any "public performance". Referring to Sections 2(q) and 2(qq) of the Copyright Act, 1957, he submitted that "public performance" would occur only in cases of "live" performance and "broadcast" was not a "public performance".

6. He also submitted that since the rights of the lyricists and composers have vested in the producers, who in turn have authorized the sound recording companies to make sound recordings and publish the same, obtaining licence from PPL (which represents the sound recording companies) or the sound recording company themselves, where they are not members of PPL, would be sufficient for the purpose of broadcast of sound recordings.

7. Relying on the judgment of the Hon"ble Supreme Court in Indian Performing Rights Society's case (supra) and the two Division Bench judgments of this Court in the case of [Eastern India Motion Pictures Association and Others Vs. Indian Performing Right Society Ltd. and Others](#), and [Eastern India Motion Pictures and Others Vs. Performing Right Society Ltd. and Others](#), he further submitted that it was legally settled that lyricists, composers, and accordingly their association, IPRS, have no copyright on the basis of which any claim could be made against any radio station broadcasting sound recordings.

8. Referring to the Delhi High Court suit, the learned senior counsel for the Appellant, submitted that IPRS has, in fact, admitted in that suit that PPL was a registered copyright society u/s 33 of the Copyright Act, 1957, in respect of sound recordings and the members of PPL have exclusive right to grant licence, inter alia, for communicating sound recordings to the public, and hence IPRS could not have any right to restrain broadcast of sound recordings.

9. Relying again on the judgments referred supra, the learned senior counsel for the Appellant submitted that it was clear that the lyricists" and composers" rights, if any,

could be preserved only by a specific agreement or contract to the contrary and this question could not be gone into, in the absence of proper materials. He submitted that in the present case no agreement or contract of any nature was disclosed, either before the Hon"ble First Court or before us. He, thus, submitted that IPRS could not claim any right on a factual basis either, more particularly so, as whether or not there was any agreement to the contrary, would only be within the special knowledge of IPRS or its members.

10. learned senior counsel for the Appellant submitted that, in the facts and circumstances of the instant case, a fortiori, quia timet action would be maintainable and person must be held to have access to justice, if his right in any manner, whether to carry on business is infringed upon, or there is a future threat to such liberty which he enjoys. In this regard he relied on the judgment of the Hon"ble Supreme Court in the case of [Tashi Delek Gaming Solutions Ltd. and Another Vs. State of Karnataka and Others](#), and the case of Copyright Agency Ltd. and Ors. v. Haines and Anr., 1982 FSR 331. He has further referred to a single bench decision of the Delhi High Court in the case of Suraj Industries and Ors. v. Manek Industries and Ors., 1991 (11) PTC 141 (Del) and submitted that RTB's suit was a prior suit and the latter suit in Delhi High Court instituted by IPRS was liable to be stayed u/s 10 of the Code of Civil Procedure. He has also relied on the order of the Copyright Board at Hyderabad in the case of Music Broadcast Private Ltd. and Ors. v. Phonographic Performance Ltd., (2003) 26 PTC 70 and submitted that licence for broadcasting sound recordings administered by PPL was granted automatically pursuant to the said order and after procedural requirement being complied with. He, thus, submitted that the fact that RTB did not have a licence from PPL was immaterial.

11. On the basis of the above submissions, learned senior counsel for the Appellant prayed that the instant appeal be allowed and the judgment and order of the Hon"ble First Court be set aside.

12. The learned Counsel appearing on behalf of the Respondents No. 3, 4 and 5, being the added Defendants in the suit, essentially adopted the submissions made on behalf of the Appellant. He has stated that the said Respondents were carrying on business, inter alia, of broadcasting and operating FM radio stations in Kolkata, Mumbai and Delhi respectively. After having come to learn of the instant suit filed by RTB with prior leave under Order 1 Rule 8 of the Code of Civil Procedure, 1908, and having similar interest, an application was made to intervene in the suit and for orders of injunction against IPRS. According to the learned Counsel, by an order dated 26th April, 2006, the petition of the added Respondents were allowed to the extent of orders in terms of prayers (a) and (b) and the added Defendants were directed to pay royalty as per the prescribed rate, without prejudice to their rights and contentions. It was submitted by the learned Counsel for the Respondents No. 3, 4 and 5 that the order of the Hon"ble First Court was liable to be set aside for the same reasons, as have been submitted on behalf of the Appellant.

13. On the other hand, learned senior counsel appearing on behalf of the Respondent IPRS, submitted that the question which is germane for consideration in the instant appeal is whether the Appellant has any legal right whatsoever in aid of its prayer for interlocutory injunction. Having relied on the facts of the case, he submitted that the Plaintiff has filed the present suit alleging that IPRS was giving threats and such threats were wrongful threats within the meaning of Section 60 of the Copyright Act, 1957. He has further contended that the Respondent IPRS having filed a suit before the Delhi High Court, inter alia, claiming for damages for infringement of its copyright, the present suit filed by RTB invoking Section 60 of the Copyright Act, 1957, has become infructuous. In this regard, he has relied on single bench judgment of the Bombay High Court in the case of Music India Ltd. v. M/s. Super Cassettes Industrial Pvt. Ltd. and Ors., 1987 (7) PTC 83 (Bom).

14. He has submitted that RTB approached the Hon'ble First Court on the basis of pleadings that it had obtained a licence from the Government of India to set up a radio station and had to commence broadcasting within a timeframe, failing which its licence would be cancelled. However, before the Delhi High Court, RTB, as Defendant, had submitted that it had not yet obtained any licence and it would give intimation of fifteen days prior to broadcast. Learned senior counsel for the Respondent IPRS, thus, submitted that the Plaintiff-RTB had no legal right and as such not entitled to the reliefs sought for.

15. Learned senior counsel for the Respondent IPRS further submitted that the instant suit was filed on April, 2006 and, till date, the Plaintiff -RTB was neither broadcasting nor had it given any intimation to the Delhi High Court in the meanwhile as to when it would commence broadcasting. He further submitted that RTB had no right to file the present suit and it was premature and speculative in nature. He also submitted that RTB, before the Hon'ble First Court, had stated on affidavit that it stood threatened by IPRS and on the other hand, in the suit filed by IPRS before the Delhi High Court, RTB, as Defendant, submitted that there was no threat. According to the learned senior counsel for the Respondent IPRS, the Plaintiff- RTB, in the instant suit, had sought to play a gross fraud upon this High Court and had mislead it having approached this High Court with unclean hands. He has also submitted that IPRS has more than 1500 members, including music companies and producers and in terms of Section 17 of the Copyright Act, 1957, unless there is an agreement to the contrary, the producers and/or sound recording companies, who are also members of IPRS, become owners of the copyright. This, according to him, however, did not mean that the separate copyright in respect of such lyrics or musical work was subsumed into the sound recording. The producers and/or music companies became the owner of literary works and musical works and they were entitled to collect royalty for such works. According to him, IPRS is a society which collects royalty for the public performance and/or communication to the public of literary and musical work. The separate copyrights of the producers in respect of sound recordings are administered by PPL. In view of Section 13(4) of the

Copyright Act, 1957 those separate copyrights are not affected and IPRS is entitled to collect royalty on behalf of its members for the literary and musical works contained in a song.

16. According to the learned senior counsel for the Respondent IPRS, the Plaintiff-RTB admittedly intends to broadcast songs. He submitted that broadcast was defined u/s 2(dd) of the Copyright Act, 1957, which meant communication to public. He further submitted that "communication to the public" was defined u/s 2(ff) of the Copyright Act, 1957. u/s 14 of the Copyright Act, 1957, copyright means to do or to authorize the doing of the works in respect of a work, or any other substantial part thereof, including communicating to public. Therefore, according to him, if the Plaintiff- RTB broadcasted any song containing the literary and musical works of IPRS, without obtaining a licence, the same would tantamount to infringement of copyright of the members of IPRS.

17. He also submitted that there is no copyright in a "song" per se, because a song is not one of the types of work recognized by the Copyright Act, 1957. The term, "work" is defined u/s 2(y) of the Copyright Act, 1957. According to him, the Copyright Act, 1957, specifically Section 13(1) therein, identifies the various classes of works in which copyright subsists. He further submitted that this was relevant because Section 16 of the Copyright Act, 1957, specifically provides that shall be no entitlement of copyright in works other than those provided by the Copyright Act, 1957. Thus, according to him, Section 13(1) of the Copyright Act, 1957, mandates that copyright shall subsist in certain classes of works, namely, "original literary, dramatic, musical, and artistic works" and "cinematograph films" and "sound recordings". He also submitted that a "song", therefore, comprises of a "bundle" of works, namely, "words" or "lyrics", "music" or "musical compositions". He, therefore, submitted that when a singer performs these aforementioned works and the performance is recorded, a sound recording is created. According to him, lyrics are "literary works", within the meaning of Section 2(o) of the Copyright Act, 1957, and musical compositions are defined as "musical works" u/s 2(p) of the Copyright Act, 1957. Similarly, a "sound recording" is defined in Section 2(xx) of the Copyright Act, 1957.

18. Learned senior counsel for the Respondent IPRS submitted that copyright has long since been recognized as bundle of rights. He submitted that this logic was drawn from the mandate of the Copyright Act, 1957, particularly Section 13(4), which specifically provides that despite incorporation of a work into a sound recording or a cinematograph work, the works so incorporated shall not lose their separate copyright. He submitted that the legislative intent is thus clear from the use of the words, "separate copyright". He also submitted that Section 13(4) of the Copyright Act, 1957, provides that, "the copyright in a cinematograph film or sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the sound recording is

made". He, therefore, submitted that this provision made it clear that separate copyright of literary work and musical are not subsumed/merged and/or affected in any manner, just because it is a part of a sound recording or a cinematograph film. Therefore, according to the learned senior counsel, the Copyright Act, 1957, envisages protection of separate rights and the same was further evident from Section 56 of the said Act.

19. He also submitted that IPRS is a copyright society and is registered as such u/s 33(3) of the Copyright Act, 1957, and administers right in respect of musical works and words and any action intended to be sung, spoken or performed with the music. Therefore, according to him, IPRS administers right only in respect of literary works and musical works. He also submitted that there was another copyright society, namely, the Phonographic Performance Ltd. (PPL) which administers rights only in respect of sound recordings. Therefore, according to him, the rights administered by IPRS and PPL were distinct and separate. He further submitted that the contention of the Plaintiff-RTB that it is obliged to take licence only from PPL, was thoroughly misconceived. He submitted that, in fact, a perusal of the membership list of PPL would show that many members of PPL were also members of IPRS, having assigned their rights in words and music to IPRS and rights in sound recordings separately to PPL.

20. The learned senior counsel for IPRS submitted that in view of Section 13(4) of the Copyright Act, 1957, separate copyright of literary and musical work were not affected and therefore, IPRS was entitled to law to collect royalty in respect of literary works and the musical works embodied in a song when the same was communicated to public.

21. The learned senior counsel for the Respondent IPRS, in conclusion, submitted that the present suit has become infructuous in view of the subsequent suit filed by IPRS at Delhi High Court and in any event by virtue of RTB's own admission made before the Delhi High Court that there is no threat, the instant suit is premature and is liable to be dismissed for lack of cause of action. In the circumstances, he submitted that the instant appeal is also liable to be dismissed.

22. After considering the submissions made by the learned senior counsel appearing on behalf of the parties, we are of the view that in the facts and circumstances of the instant case, what is required to be considered and decided in the present appeal is whether the Plaintiff- RTB, being the Appellant herein, has any legal right to be granted an order of injunction, as prayed for, before the Hon'ble First Court, in its interlocutory application.

23. However, before we venture to do so, we must hasten to state that we intend to confine ourselves only to the aspect of non-grant of interlocutory relief and not go beyond it, since it would tantamount to adjudication of the principal issues of the pending suit itself. We shall, therefore, only take into consideration the submissions

made by the parties before us which, according to us, are relevant for the purpose of deciding this aspect of the matter alone.

24. As it appears RTB, as Plaintiff, instituted the instant suit inter alia seeking a declaration that the Defendant-IPRS and/or its members do not have any copyright in the sound recording or the works underlying the same and were not entitled to claim any licence fee or interfere with broadcasting activities of radio stations. Additional relief has also been claimed by the Plaintiff- RTB u/s 60 of the Copyright Act, 1957 against groundless threats of initiating legal proceeding, made by IPRS.

25. At this stage, one cannot lose sight of an important development that took place subsequent to the filing of the instant suit. The Defendant -IPRS instituted a suit against RTB before the Delhi High Court, praying, inter alia, for damages for infringement of copyright and for a perpetual injunction restraining infringement of the Plaintiff s (IPRS"s) copyright. An interlocutory application was also taken out therein by the Plaintiff (IPRS) under Order 39 Rules 1 and 2 read with Section 152 of the Code of Civil Procedure, 1908.

26. The contention of the Plaintiff/Appellant- RTB, elaborately dwells upon the various provisions of the Copyright Act, 1957 and it has been contended, inter alia, that IPRS and its members do not have any copyright in sound recording in law and that in the absence of any right in law over sound recordings generally, IPRS cannot claim royalty in all sound recordings intended to be broadcast. In this regard, reliance has been placed on the judgment of the Hon"ble Supreme Court in the Indian Performing Rights Society"s case (supra).

The Hon"ble Supreme Court in Indian Performing Rights Society"s case was considering, inter alia, whether in view of the provisions of the Copyright Act, 1957, an existing and future right of a music composer, lyricist was capable of assignment and whether the producer of a cinematograph film could defeat the same by engaging the same person.

27. The other decision relied upon by the Appellant in the case of [Eastern India Motion Pictures Association and Others Vs. Indian Performing Right Society Ltd. and Others](#), has been considered by the Hon"ble Supreme Court in the judgment referred supra and, as such, we do not propose to deal with it separately. Similarly, the other judgment relied on by the Appellant in the case of [Eastern India Motion Pictures and Others Vs. Performing Right Society Ltd. and Others](#), takes into consideration and relies on the aforementioned judgment of the Supreme Court.

28. So far as the merits of the respective contentions of the parties with regard to the applicability of the judgment of the Hon"ble Supreme Court in Indian Performing Rights Society"s case (supra) is concerned, we do not wish to express any opinion, since if we do so, it would tantamount to adjudication of the principal prayers of the suit itself, at the interlocutory stage.

29. From a bare perusal of the reliefs as prayed for in the instant suit, it appears to us that the instant suit is not a suit simplicitor u/s 60 of the Copyright Act, 1957, against IPRS. In fact, the principal reliefs include seeking a declaration --that IPRS and/or its members do not have any copyright in the sound recordings or the works underlying the same and are not entitled to any licence fees or interiery with broadcasting activities of radio stations. Although we are not willing to express our opinion as to whether the suit before the Delhi High Court instituted by IPRS is liable to be stayed, as submitted by the learned senior counsel appearing on behalf of the Appellant, relying on *Suraj Industries and Ors. v. Manek Industries and Ors.*, 1991 (11) PTC 141 (Del), we are, at the same time, unable to accept the submission of the Respondent IPRS, relying on *Music India Ltd. v. Super Cassettes*, 1987 (7) PTC 83 (Bom), that the instant suit has become infructuous since action u/s 60 of the Copyright Act, 1957 cannot be maintainable any more consequent to the filing of the suit at Delhi High Court, in view of our preceding discussion.

30. We are thus unable to accept the submission made in this regard on behalf" of the Respondent IPRS that the present suit for groundless legal threat has become infructuous because of the institution of the subsequent suit by IPRS against RTB before the Delhi High Court. The Respondent IPRS was, in fact, conscious of the fact that RTB instituted the present suit before this High Court, inter alia, praying for relief u/s 60 of the Copyright Act, 1957 and it was a deliberate action on the part of IPRS to institute the subsequent suit against RTB at Delhi High Court, soon thereafter.

31. So far as the judgment of the Copyright Board in the case of *Music Broadcast Private Ltd. and Ors. v. Phonographic Performance Ltd.*, (2003) 26 PTC 70), relied on by the learned senior counsel for the Appellant with regard to issue of licence for broadcastings and recording administered by PPL, we do not consider it necessary to take any notice thereof in view of the scope with in which we have confined ourselves in so far as the instant appeal is concerned.

32. In the instant case, however, it appears that the Appellant seeks to maintain a quia timet action relying on Section 60 of the Copyright Act 1957. Section 60 of the Copyright Act is reproduced hereinbelow:

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

33. The definition of quia timet appearing in Black's Law Dictionary, 8th Edition, is as follows: "quia timet- A legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest."

34. The judgment of the Hon"ble Supreme Court, in the case of [Tashi Delek Gaming Solutions Ltd. and Another Vs. State of Karnataka and Others](#), recognizes that a fortiori, a quia timet application would be maintainable and the person must be held to have access to justice if his right in any manner, whether to carry on business is infringed upon or there is a future threat to his liberty.

35. The Appellant has also relied on the decision rendered by the Hon"ble Supreme Court of New South Wales: Equity Division in the case of Copyright Agency Ltd. and Ors. v. Haines and Anr., 1982 FSR 331 with regard to the criteria of probability of apprehended injury to be considered by a Court while granting quia timet relief.

36. In the instant case it appears that it has been submitted by RTB before the Delhi High Court that a licence is yet to be issued by the Government and there was no immediate threat for which interim order would be required. Based, inter alia, on this submission of RTB, the Delhi High Court refused to grant an interim order in favour of IPRS. In the order of the Delhi High Court, the pending proceeding before this Court has also been noticed. In our opinion, the action of the Defendant in the present suit, i.e., IPRS, instituting the latter suit at Delhi High Court is a clear indication that they have initiated legal action against the Appellant herein.

37. However, in respect of the prima facie observation made by the Hon"ble First Court in the order impugned that IPRS was entitled to claim royalty from RTB, we are of the opinion that the same need not have been made since whether or not IPRS is legitimately entitled to demand royalty from RTB is an issue which will arise only at the time of commencement of broadcast by RTB, which, admittedly, has not yet commenced and the parties will have the liberty then to approach the Hon"ble First Court for appropriate orders.

38. We are also of the opinion that in view of the subsequent suit filed before the Delhi High Court by IPRS, a quia timet relief based on the provision of Section 60 of the Copyright Act, 1957, may not be germane any more. However, it appears

that Section 60 falls under Chapter XII of the Copyright Act, 1957, which deals with civil Remedies. It is, therefore, required to be examined as to whether a quia timet relief can be granted to the Plaintiff/Appellant- RTB beyond the scope of Section 60, which falls under Chapter XII of the Copyright Act, 1957.

39. As discussed before, the definition of quia timet, borrowed from Black's, means a legal doctrine that allows a person to seek equitable relief from future probable

harm to a specific right or interest. Therefore, such equitable relief can be granted to a person, provided he can successfully demonstrate before a Court that his fears in this regard are not unfounded.

40. While we are convinced that a quia timet relief can be granted in favour of the Appellant, having regard to the facts and circumstances of the instant case as discussed in detail above, we are also of the opinion that the same ought not to be in the nature of a relief which, if granted, would, in effect, allow the present suit itself, at the interlocutory stage. Therefore, although it may not be open to the Plaintiff/Appellant to invoke Section 60 of the Copyright Act, 1957, and seek quia timet relief as contemplated under that provision of law, consequent to filing of the subsequent suit at Delhi High Court by IPRS, we are nevertheless of the prima facie opinion that in the facts and circumstances of the instant case, as discussed above, the Appellant is entitled to a quia timet relief in the nature of an injunction restraining the Respondent IPRS from initiating any proceeding against the Plaintiff as well as the added Defendants, under Chapter XIII of the Copyright Act, 1957, until disposal of the present suit. The impugned judgment and order stands modified accordingly.