
Super Cassettes Industries Ltd Vs M/S Shreya Broadcasting Pvt. Ltd

Civil Suits (OS) 1372 Of 2009

Court: Delhi High Court

Date of Decision: Feb. 25, 2019

Acts Referred:

Copy Right Act, 1957 " Section 39, 52, 52(1)(a), 52(1)(a)(ii), 61, 61(1)#Evidence Act, 1872
" Section 65B, 65B(4), 114

Citation: (2019) 258 DLT 116 : (2019) 3 AD(Delhi) 552 : (2019) 80 PTC 551

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Pravin Anand, Prachi Aggarwal, Mrinali Menon, Yoginder Handoo, Nikhil Bhat

Judgement

1. Plaintiff filed the present suit inter alia seeking a decree of permanent injunction restraining the defendants, their officers, servants, agents and

representatives 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; an order for rendition of

accounts and delivery of the infringing articles, damages and costs.

2. In the suit the plaintiff pleaded that it was established as a private limited company in 1983 and became a deemed public limited company under the

Companies Act in the year 1988-89. Plaintiff is engaged in the business of manufacturing and marketing audio cassettes, video cassettes (blank and

recorded), compact discs (CDs), televisions, two-in-ones, tape recorders, CD players, fans, mineral water, etc. Plaintiff is a repertoire of the

cinematograph films and sound recording is one of its most precious assets. Plaintiff acquired 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. Further, as producer thereof

the plaintiff is itself the corporate author of and the first owner of the copyright in those sound recordings and audio visual works (cinematograph

films) which the plaintiff itself produces. Plaintiff also gives licenses to other broadcasting organizations for the use of works in which it enjoys

copyright. Thus number of competing television news channel companies have entered into license agreements with the plaintiff.

3. As per the plaint, defendant No. 1 is a private limited company telecasting through its channel "TV5" and has launched TV5 a 24 hours Telugu

News Channel on 2nd October, 2007. Though one of the relatively newer channels, it has gained substantial viewership and high TRP as claimed by

the defendant on its website. Though the defendant calls its channel a "news channel" in fact it has been engaging in unauthorized use of the

plaintiff's copyright works for the purpose of providing entertainment and attracting greater viewership.

4. Plaintiff came to know of the infringement of its copyrights by the defendant in the course of random monitoring of the defendant's

broadcasting on a sample basis which is a part of normal activity of the plaintiff. It was revealed that the defendant was broadcasting plaintiff's

copyright work without permission/license from the plaintiff. Plaintiff tried to contact the defendant to amicably resolve the matter and sent an email

dated 24th April 2009 addressed to Mr. Ramesh Kandula (Executive Director) with copy to Mr. B. Ravindranath (Managing Director) giving specific

instances of infringement. However, no response was received resulting in the plaintiff issuing a cease and desist legal notice dated 6th May, 2009.

5. In the written statement filed, defendant stated that none of the assignment deeds filed by the plaintiff to support its claim of ownership and

entitlement to grant license to third parties permitted it to exploit the said rights assigned to the plaintiff. Plea was taken that Section 39 of Copy Right

Act, 1957 specifically excludes from the ambit of infringement, use of excerpts by a broadcaster for reporting on current events or for review in the

process of dissemination of the news. Further, Section 52 (1) (a) (ii) of the Copy Right Act, 1957 also excludes from the ambit of infringement, a fair

dealing with musical work for the purposes of criticism or review of that work. It is further stated that the infringing CD allegedly recorded from

the broadcaste between 1st June, 2009 to 13th June, 2009 have not been provided to the defendant. Further, even assuming the act of defendant does

not fall in the exceptions as noted above, duration of play was between 7 seconds to 25 seconds and thus insignificant in a manner consistent with the

defendants primary obligation of dissemination of news regarding the applause or appreciation won by the picture.

6. On the pleadings of the parties following issues were settled by this court vide order dated 10th March, 2011:

(i) Whether the suit is not maintainable for non-compliance with Section 61 of the Copyright Act? OPD.

(ii) Whether the defendants act of broadcasting the plaintiff's repertoire on their channel without licence amounts to infringement of the

plaintiff's copyright? (OPP).

(iii) Whether the plaintiff is entitled to the relief of permanent injunction against the defendants? (OPP).

(iv) Whether the plaintiff is entitled to damages and, if so, to what extent? OPP.

(v) Whether the defendants use of the plaintiff's copyright works falls under Section 52 (1) (a) (ii) of the Copyright Act? (OPD).

(vi) Whether the defendants use of the plaintiff's copyright works falls under Section 39 of the Copyright Act? (OPD).

(vii) Relief.

7. Plaintiff examined Shri Vipin Vij authorized attorney as PW-1 and Shri Deepak Kamlesh Pania, Monitoring. Analyst of Super Cassettes i.e. the

plaintiff as PW-2 who deposed in sync with averments in the plaint and exhibited relevant documents. The defendant though granted opportunity did

not lead any evidence hence defendant's evidence was closed vide order dated 28th October, 2015.

8. In the written statement there is no denial by the defendant of the use of the material, infringement of the copyright whereof is alleged by the

plaintiff. Therefore, it would be appropriate to first deal with the three preliminary objections in which regard issues Nos. 1, 5 and 6 have been settled

before dealing with issues No. 2, 3 and 4.

9. Issue No. 1: Whether the suit is not maintainable for non-compliance with Section 61 of the Copyright Act? (OPD).

9.1 Learned counsel for the defendant contends that as the author of the artistic work which the plaintiff claims copyright in, has not been joined as a

party in the present suit, the suit is liable to be dismissed for non-joinder of necessary parties. It is contended that even assuming all the documents are

deemed to be proved there is a difference between contract work and contract recordings and the assignment deed is in contract works and not

contract recordings.

9.2 Learned counsel for the plaintiff submits that in view of the assignment in favour of the plaintiff, the plaintiff is not obliged to implead the owner of

the copyright as part of the proceedings. Reliance is placed on the order dated 24th October, 2013 passed by this Court passed in CS (OS) 1915/2012

titled as Super Cassettes Vs. Malayalam Communications Ltd.

9.3 Section 61 of the Copyright Act reads as under:

"61. Owners of copyright to be party to the proceeding." (1) In every civil suit or other proceeding regarding infringement of copyright instituted

by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a

defendant, he shall have the right to dispute the claim of the exclusive licensee.

(2) Where any civil suit or other proceeding regarding infringement of copyright instituted by an exclusive licensee is successful, no fresh suit or other

proceeding in respect of the same cause of action shall lie at the instance of the owner of the copyright.

9.4 Plaintiff has exhibited the Assignment Deeds as Ex. PW-1/4A (colly). Clause 1.1 and 1.3 of the Assignment Deed describes contract works and

contract recordings as under:

1.1 "CONTRACT WORKS" shall mean the lyrics and/or musical compositions embodied in the contract recordings as enlisted in Annexure

A hereto that have been written by A.R.Rahman and co-writers (other than MIA) and owned by the Assignor and featured in the Film.

1.2 "CONTRACT RECORDINGS" shall mean the sound recordings produced by A.R.Rahman featuring the

respective performers thereon

and featured in the Film, the particulars whereof are set forth in Annexure A hereto.

9.5 Clause 4 of the Assignment Deed relates to Assignment and notes as under:

4. ASSIGNMENT

Subject to the terms and conditions of this Agreement, the Assignor hereby assigns on exclusive basis the copyright in the Contract Works and

exclusively licenses the copyright in the Contract Recordings to and in favour of the Company for the Term and strictly limited to the Territory:-

A. The exclusive right to make or authorize the making the copies of any sound recordings and the underlying Literary and Musical works together

with all right of production/reproduction, recording/re-recording, communication to public (including through television and satellite), synchronization,

publication, hiring, renting, performing in public and publishing the Contract Works/Contract Recordings in part or whole by whatever means

(present/future) either alone or together with any other recordings of any other film and to make Mobile and Digital Contents. The Company shall not

make the Contract Recordings available on any record compiled or bundled with other recordings until at least 12 months after the release of the Film

in India save with due prior notice to the Assignor.

B. The exclusive rights to make copy of the Audio, (meaning to the lyrics with or without their musical compositions or any musical composition with

or with the lyrics) any present or future format including a photograph of any image forming part thereof; to sell ,or give on hire or offer for sale or

hire any copy, of the Record of the Audio and or (meaning to the lyrics with or without their musical compositions or any musical composition with or

without the lyrics), to communicate to public/transmit to the public including but not limited to through internet, broadband, satellite, all kind of television,

cable or through any other medium or device now known or hereafter invented and/or any part of the Contract Works or Contract Recordings to the

public and/or to authorise others to do the aforesaid acts. The assignor also grants rights or shall procure the grant of rights by the rights owner for the

Territory for Audio Visuals of the contract Recordings for full length for promotional use only. The Assignors shall procure that FoxStar India agree to

provide necessary Audio visuals at their own expense for the above purposes to the Company falling which the Company shall have to right to obtain

the same from any available source.

C. The Assignor and Mr.A.R.Rahman undertakes, on a request in writing from the Company to execute any and/or obtain the execution of such

further assurances as may be reasonably required to safeguard the rights of the Company.

D. It is hereby declared that the copyright assigned/exclusively licensed (as applicable) to the Company in pursuance of this Agreement includes:

(i) the sole right of production, reproduction and sale of Records containing the Said Works (meaning to the lyrics without or with their musical

compositions or any musical composition with or without the lyrics) and/or any part of the Contract Works or Contract Recordings in any manner

under such trademark(s) as the Company shall consider appropriate for the recording/re-recording, selling, hiring offering for sale or hire, renting,

offering for renting, (including through television and satellite), synchronization, communication to public, performing in public and publishing the

Contract Works, (including the lyrics with or without their musical compositions or any musical composition with or without lyrics) and/or any part of

the Contract Works or Contract Recordings or part thereof throughout the Territory.

(ii) The exclusive rights, title and interest in any forms/formats (whether now know or hereafter developed) via/in/on through any mode/media/medium

(whether now know or hereafter developed) in and to the Said Works, including the Literary and Musical works embodies therein, together with all

rights of broadcasting/telecasting/streaming (including on radio, television and internet/worldwide web) recording/re-recording, synchronization,

communication to public, performing in public and publishing in any other way, transmission over air waves electronically and/or through

satellite/internet/worldwide web and/or on any Mobile & Digital Device (including by way of Mobile And Digital Content as defined hereinafter

including but not limited to ring tones, ring-back/call back tones, wallpapers, screensavers, video clips of the songs, voice recordings of the songs), and

any other non-physical format existing at the time of execution of this Agreement or developed at any time hereafter in the Contract Works in part or

whole.

(iii) The exclusive right to grant license for publication, radio and television broadcasting/telecasting, internet/worldwide web/web streaming,

synchronisation, communication to public and public performance of Said Works, (meaning to the lyrics with or without their musical compositions or

any musical composition with or without the lyrics) and/or any part of the Contract Works or Contract Recordings or any part thereof.

(iv) The exclusive right of use through synchronization, recording/re-recording and public performance, communication to public (including radio and

television broadcasting/telecasting, internet/worldwide web streaming), Mobile and Digital content as defined hereinafter of the Said Works (meaning

to the lyrics with or without their musical compositions or any musical composition without or without lyrics) and/or any part of the Contract Works or

Contract Recording throughout the Territory and the Company shall have the right to authorize any other person firm company or corporation to do

any such things.

(v) the sole right to decide based on market demand whether and/or when to discontinue or recommence the production and sale of the Contract

Works or Contract Recording to produce/reproduce, hire, rent, record/re-record, synchronize, communicate to public, perform in public and/or publish

in part or full any work forming part of the Contract Works, (meaning to the lyrics with or without their musical compositions or any musical

composition with or without lyrics) and/or any part of the Contract Works or Contract Recording as above and to fix and alter the prices separately

for each mode of communicating to the public any Said Works (meaning to the lyrics with or without their musical compositions or any musical

composition without or without the lyrics) and/or any part of the Said Works or part thereof and the right at all times to use and publish the names and

photographs of artistes, musicians, lyric writers, music directors, star cast and/or any other persons associated with and/or engaged in the Said Works.

(vi) During the Term, the Company shall have SAVE as appears herein the exclusive and unrestricted rights of licensing of the said rights hereby

assigned to them to third parties on any such terms and conditions and for such monetary consideration as the Company may in its opinion deem fit

and appropriate.

Further the Company hereby undertakes that all documents and/or arrangements entered into between Company and such third party(s) pertaining to

the said Contract Works shall have clause (s) ensuring the licensors rights in totality and shall also expressly cover the following:-

“That all such third parties irrevocably consent to abide the terms of this license agreement.”

(vii) The right to use the title of the Film with respect to the Said Works (including the lyrics with or without their musical compositions or any musical

composition with or without lyrics) and/or any part of the Said Works, or Contract Works or Contract Recordings and for its advertising, marketing,

publicity, promotion, sale, distribution, exploitation and for any other purpose whereby the Songs, (meaning to the lyrics with or without their musical

compositions or any musical composition without or without the lyrics) and/or any part of the Said Works are disseminated and made available to the

public on Records, in pursuance of this Agreement.

E. It is hereby made amply clear that the Assignor has assigned the copyrights and all other rights, title and interest on any exclusive basis in and to

the Contract Works, (including the lyrics with or without their musical compositions or any musical composition with or without the lyrics) and/or any

part of the Contract Works and has exclusively licensed the copyright and all other rights title interest in and to the Contract Recordings all as

embodied in the said Film for the purpose of exploitation of the same as per the terms of this agreement for the Territory and subject as set out

herein

9.6 Clause 4 relating to Assignment grants the assignee on exclusive basis the copyright in contract works and exclusively licenses the copyright in the

contract recordings to and in favour of the assignee. The said rights inter alia include the exclusive rights to make or authorize making of the copies of

any sound recordings, the underlying literary and musical works together with all the rights of production/reproduction, recording/re-recording

communication to the public, synchronization, publication, hiring, renting, performing in public and publishing the contract works/contract recording in

part or whole by whatever means present or future. The Assignment Deed also grants exclusive right to the assignee, that is, the plaintiff herein to

grant licenses for publication, radio and television broadcasting, telecasting, internet, world wide web, web streaming, synchronization, communication

to public and public performance of the works.

9.7 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.

9.8 A perusal of Section 61 (1) of the Copyright Act as noted above shows that it is a licensee who is required to implead the owner of the copyright

as a defendant unless the Court otherwise directs and where such owner is made a defendant, he shall have the right to dispute the claim of the

exclusive licensee.

9.9 Section 61(1) of the Copyright Act is applicable to a licensee of the copyright and has no application to an assignee of the copyright who on

assignment becomes the owner of the copyright work. Plaintiff has proved in original assignment deeds Ex.PW-1/4A, Ex.PW-1/4B, Ex.PW-1/4D,

Ex.PW-1/4E, Ex.PW-1/4F and Ex.PW- 1/4I and is thus an assignee qua the copyrights mentioned in these assignment deeds and not a licensee, thus

not required to implead the original owner of the copyright work as a defendant. The suit cannot be therefore dismissed for non compliance of Section

61 Copyright Act.

9.10 Thus issue No.1 is decided in favour of the plaintiff and against the defendant qua the assignment deeds Ex.PW-1/4A, Ex.PW-1/4B, Ex.PW-

1/4D, Ex.PW-1/4E, Ex.PW-1/4F and Ex.PW-1/4I.

10. Issue No. 6: Whether the defendants use of the plaintiff's copyright works falls under Section 39 of the Copyright Act? (OPD). 10.1 Claim of

the defendant in this regard is 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.

10.2 Section 39 of the Copyright Act reads as under:

"39. Acts not infringing broadcast reproduction right or performer's right." "No broadcast reproduction right or performer's right shall be

deemed to be infringed by

(a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide

teaching or research; or

(b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review,

teaching or research; or

(c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

10.3 The defendants have cross examined Deepak Kamlesh Pania (PW-2), Monitoring Analyst of the plaintiff who deposed that in April 2009 in the

course of random monitoring he found that the defendant through its channel "TV5" was broadcasting/communicating to the public copyrighted

works belonging to the plaintiff company. On receiving instructions PW-2 recorded programmes on sample basis shown on defendants channel

wherein copyrighted works belonging to the plaintiff's repertoire were broadcasted /communicated to the public.

10.4 The CD's/DVD's recording for the period from 1st June 2009 to 14th June 2009 along with the cue sheet detailing time of recording,

film, album, programme, duration of infringement were exhibited as Ex. PW-2/1 and Ex. PW-2/2 respectively. Objection of learned counsel for the

defendant to the said exhibits is that the electronic evidence so produced and exhibited was inadmissible in evidence in view of the decision of the

Supreme Court reported as (2014) 10 SCC 473 Anvar P.V. v. P.K. Basheer.

10.5 In the affidavit by way of evidence PW-2 incorporated the conditions as prescribed under Section 65B of the Indian Evidence Act 1872 as under:

a) That the computer system are regularly used to produce the outputs in the form of magnetic media like Compact Discs and DVD's in the

normal course of time. The relevant Compact Discs containing the said recordings were produced by me in the normal course of activity. I have a

lawful control over the use of the said computer system by virtue of my capacity in the organization.

b) That the relevant recordings were a part of the input which was regularly fed to the computer system as a part of the ordinary course of activities

of the organization.

c) That the computer system as used by me has been operating properly and the electronic records and their accuracy and contents have not altered

and tempered with during the transfer process in any manner whatsoever.

d) That the information contained in the magnetic media is an exact replica and therefore, reproduces the information contained on the Electronic

Records therein.

10.6 Thus the affidavit of PW-2 satisfies the requirement laid down under Section 65B of the Indian Evidence Act and also the law laid in Anvar P.V.

(supra). Further the decision in Anvar P.V. (supra) was rendered by the Supreme Court in the year 2014 and when the present affidavit of PW-2 was

filed the law laid down by the Supreme Court in the decision reported as (2005) 11 SCC 600 State (NCT of Delhi) v. Navjot Sandhu was applicable.

Clarifying the legal position in respect of retrospective operation of the judgment in Anwar P.V. (supra) the Division Bench in Kundan Singh v. State

2015 SCC OnLine Del 13647 held:

61. In view of the aforesaid discussion, information memorised as business record or records maintained in common course of events are not treated

as hearsay even if the maker lacks personal knowledge of the facts or events. The document should be prepared in normal course of business must

have been at or near the time of events it records and should have been made in normal course of business activities or events. Sub-section (4) to

Section 65B postulates that the certificate should be given by a person occupying a responsible official position in relation to operation of the relevant

device or management of the relevant activities. If the said conditions are satisfied, it promotes and establishes the trustworthiness. In such cases,

presumption of fact regarding genuineness and authenticity of the content can be invoked at the discretion of the court under Section 114 of the

Evidence Act.

62. In Anwar P.V. (supra) in paragraph 1 itself the Supreme Court noticed the difference between relevancy and admissibility, which is examined at

the initial stage; and genuineness, veracity and reliability of the evidence, which is seen by the court subsequently. Thus, the ratio and dictum in Anwar

P.V. (supra) is based and predicated on the difference between admissibility and veracity or evidentiary value. The Supreme Court dealt with the

aspect of admissibility in strict legal sense, not to be confused with evidentiary value or correctness of contents. Of course, when the conditions

mentioned in Section 65B are satisfied, in terms of Section 114 of the Evidence Act, the court may presume existence of certain facts for the

computer output would have data and information collected or derived in common course of human conduct and in public and private business.

10.7 Objection of the learned counsel for the defendant qua the admissibility of the exhibits for purported non-compliance of Section 65B of the Indian

Evidence Act is thus liable to be dismissed in view of the discussion aforesaid. From the cue sheets giving details of time of the recordings/films/album

exhibited as Ex.PW-2/6, 2/7 and 2/8 it is apparent that the defendant cannot claim the benefit of Clause (b) of Section 39 of the Copyright Act. Hence

issue No.6 is also decided in favour of the plaintiff and against the defendant.

11. Issue No. 5: Whether the defendants use of the plaintiff's copyright works falls under Section 52 (1) (a) (ii) of the Copyright Act? (OPD).

11.1 The next defense of the defendant is the claim of exception under Section 52(1)(a)(ii) of the Copyright Act. Section 52(1)(a) of the Copyright

Act reads as under:

52. Certain acts not to be infringement of copyright. (1) The following acts shall not constitute an infringement of copyright, namely:—

(a) a fair dealing with any work, not being a computer programme, for the purposes of—

(i) private or personal use, including research;

(ii) criticism or review, whether of that work or of any other work;

(iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.

Explanation- The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any

computer programme which is not itself an infringing copy for the said purposes, shall not constitute infringement of copyright.

11.2 From the CDs as exhibited by PW-2 vide Ex. PW-2/3, 2/4 and 2/5 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 in a way to enhance the programmes of the defendant. Hence the

defendant cannot claim the benefit of Section 52(1)(a)(ii) of the Copyright Act. Thus issue No.5 is also decided in favour of the plaintiff and against

the defendant.

12. Issue No. 2: Whether the defendants act of broadcasting the plaintiff's repertoire on their channel without licence amounts to infringement of

the plaintiff's copyright? (OPP).

12.1 The defendant contests that the plaintiff has been able to prove that the Act of broadcasting the plaintiff repertoire by the defendant on its

channel without license amounts to infringement of the plaintiff's copyright for the reason the plaintiff has failed to establish that it is the owner of

the copyright as the assignment deeds have not been proved in original. It is further contended that even the assignment deeds which were produced

in original have not been proved in accordance with law because the said assignment deeds could have been proved only by either the signatory to the

document or the author of the document or a witness who had seen the author of the document signing or executing the same. It is contended that

PW-1 admitted that he was neither a signatory nor an attesting witness to the assignment deeds Ex. PW-1/4A to PW-1/4J. In the alternative it is

contended that even if the documents can be read in evidence the copyright in the work has not been assigned to the defendant.

12.2 Learned counsel for the plaintiff contends that the assignment deeds Ex. PW-1/4A, 1/4B, 1/4D, 1/4E, 1/4F and 1/4I were produced in original

before the learned Joint Registrar at the time of recording of the testimony of PW-1 and the originals were seen and returned. Thus the photocopies of

the exhibits PW-1/4A, 1/4B, 1/4D, 1/4E, 1/4F and 1/4I have been proved in accordance with the law. No challenge to the mode of proof of the

documents have been taken at the time when the same were tendered, thus the defendant cannot now object to the mode of the proof of these

documents. Even if accepting that the originals Ex. PW-1/4C, 1/4G, 1/4H and 1/4J were not produced, the plaintiff has proved its case of infringement

of its copyright work by the defendant by the evidence of PW-1 who exhibited and proved the assignment deeds vide exhibit PW-1/4A, 1/4B, 1/4D,

1/4E, 1/4F and 1/4I and PW-2 who produced the CDs of the recording from the programmes telecast by the defendant on the channel

vide Ex. PW-2/3, 2/4 and 2/5 and the cue sheets Ex. PW-2/6, 2/7 and 2/8.

12.3 As noted above originals of Ex. PW-1/4A, 1/4B, 1/4D, 1/4E, 1/4F and 1/4I were brought to the court when PW-1 entered the witness box. No

objection to the mode of proof of Ex. PW-1/4A, 1/4B, 1/4D, 1/4E, 1/4F and 1/4I was taken and only Ex. 1/4C, 1/4G, 1/4H and 1/4J were objected as

original were not produced. It is well settled that if a document is otherwise inadmissible for want of a certificate or any other requirement of law, it

being exhibited in the course of trial does not make the document admissible in law and though an objection as to the mode of proof can be waived off

and should be taken at the first instance, an objection as to the admissibility of a document which goes to the root of the matter can be taken at any

stage. [See (2003) 8 SCC 752 R.V.E. Venkatachala Gounder Vs. Arulmiga Viswesaraswami & V.P. Temple & Anr.]

12.4 In the absence of mode of proof being objected to when the exhibits were being tendered in respect of the assignment deeds vide Ex. PW-1/4A,

1/4B, 1/4D, 1/4E, 1/4F and 1/4I the defendant cannot now object to the same. Though mode and manner of proof of Ex. PW-2/1 to 2/8 was objected

to however as detailed earlier the same is electronic evidence and PW-2 has proved the same by incorporating the conditions of Sections 65B of the

Indian Evidence Act in his evidence by way of affidavit, hence Ex.PW-2/1 to Ex.PW-2/8 also stand proved in accordance with law.

12.5 Further objections of the learned counsel for the defendant to the deposition of PW-2 is that the deposition in respect to the conditions of Section

65B of the Indian Evidence Act is stated in para 10 and 11 of the affidavit which are not based on the personal knowledge of the deponent but based

on legal advise. PW-2 has been cross examined on the contents of para 11 as noted above and he denied the suggestion that the contents of para 11B

of the affidavit were wrong or that the certificate under Section 65B of the Indian Evidence Act was incorrect.

12.6 Plaintiff having proved that it is the assignee of the copyright vide assignment deed exhibits Ex.PW-1/4A, Ex.PW-1/4B, Ex.PW-1/4D, Ex.PW-

1/4E, Ex.PW-1/4F and Ex.PW-1/4I and PW-2 having proved that the defendant was broadcasting the works in which plaintiff had the copyright

assignment without any license, the act of the defendant amounts to infringement of the plaintiff's copyright. Thus issue No.2 is decided in favour

of the plaintiff and against the defendant and it is held that the defendant infringed the copyright of the plaintiff assigned to it vide assignment deeds

Ex.PW-1/4A, 1/4B, 1/4D, 1/4E, 1/4F and 1/4I .

13. Issue No. 3: Whether the plaintiff is entitled to the relief of permanent injunction against the defendants? (OPP).

13.1 For the discussion on issue Nos. 1, 2, 5 and 6 the plaintiff is entitled to the relief of permanent injunction against the defendant.

14. Issue No. 4: Whether the plaintiff is entitled to damages and, if so, to what extent? (OPP)

14.1 Learned counsel for the defendant contends that even accepting the evidence of the plaintiff having been proved no evidence has been led of any

substantive damages even as per the cue sheets applying the principal of de minimis. The alleged infringement if any being trivial in nature, the

defendant is not liable to pay any damages. Reliance is placed on the decision reported as (2012) 192 DLT 502 India TV Independent News Service

Pvt. Ltd. v. Yashraj Films Pvt. Ltd.

14.2 Plaintiff claims damages primarily on two counts. Firstly, direct loss of license fee and secondly, the defendant's act of infringement causing

irreparable and unquantifiable loss to the plaintiff.

14.3 In respect of direct loss of license fees PW-1 deposed that the license fees charged from Star Network for limited use which includes the

channel Star News for the financial years 2010-2011 is Rs. 8 Crore 50 lakhs and from Zee Network Enterprise Limited for their network of channel

including Zee News is Rs. 7 Crore 50 lakhs for the year 2010- 2011. It is further submitted that even in relation to news channels, the license fee runs

into several lakhs of rupees. Thus the damages claimed by the plaintiff for Rs. 21,00,000/- are nominal and not excessive.

14.4 In respect of irreparable and unquantifiable loss to the plaintiff PW-1 submitted that the same also runs into crores of rupees. To compute

punitive damages, plaintiff relies upon the decision of this court in 207(2014) DLT 713(DB) Hindustan Unilever Limited v. Reckitt Benckisser. The

plaintiff also relies upon the various orders passed by this Court granting punitive damages.

14.5 In Hindustan Unilever (Supra) the Division Bench of this Court relying upon the decision in (1964) 1 All.ER 367 Rookes v. Barnard held

“61. In this section of the judgment, this court proposes to discuss the correctness of award of damages by the learned Single Judge in the

impugned judgment. As noticed previously, the Single Judge felt that the plaintiff, Reckitt had been unable to prove the damages suffered on account

of disparagement; yet award of punitive damages were called for. The defendant, HUL questions the grant of punitive damages whereas the plaintiff

Reckitt complains that general or compensatory damages ought to have been awarded.

62. It is an accepted principle in English law that general damages are “at large” in the case of defamation, including disparagement, slander, etc. This

was first stated in South Hetton Coal Company Limited v. North-Eastern News Association Limited, [1894] 1 QB 133 that “if the case be one of libel-

whether on a person, a firm, or a company-the law is that damages are at large. It is not necessary to prove any particular damage; the jury may give

such damages as they think fit, having regard to the conduct of the parties respectively, and all the circumstances of the case. “ It is important that a

successful plaintiff is allowed to recover such damages as would compensate for the loss of its reputation. These principles were re-stated in John v.

MGN Ltd. [1997] QB 586, where the Court of Appeal held that:

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the

wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress,

hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important

factor is the gravity of the libel; the more closely it touches the plaintiffs personal integrity, professional reputation, honour, courage, loyalty and the

core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a

greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to

vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any

retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the

libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the

plaintiffs feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to

apologise, or cross-examines the plaintiff in a wounding or insulting way.

76. Of course, a company stands in a slightly different position, for it has no feelings to hurt, and it follows that considerations of aggravation which

might be relevant if the claimant is an individual do not apply. However, the entitlement of a company to recover general damages has recently been

affirmed by the House of Lords: see *Jameel v. Wall Street Journal* [2007] 1 AC 359. A company's good name is a thing of value, but it can only be hit

in its pocket, and there is no evidence here of actual financial loss. That is not to say that it may not merit vindication. The function of damages for

vindication was well explained by Lord Hailsham in *Broome v. Cassell* MANU/UKHL/0003/1972 : [1972] AC 1027 at 1071c-e in terms of the need,

'in case the libel, driven underground, emerges from its lurking place at some future date, for the claimant (whether personal or corporate) to be able

to point to a sum sufficient to convince a bystander of the baselessness of the charge. Of course, those words were spoken in the context of a jury

award, and it could fairly be said that the need for vindication by an award of damages is less in a case where some vindication is provided by a

reasoned judgment.

This was followed in *Applause Store Productions Limited and Firscht v. Raphael* [2008] EWHC 1781, where the plaintiff complained of libel on

account of a fake Facebook identity which falsely described the claimant's sexual orientation, his relationship status (that is to say, whether he was

single or in a relationship), his birthday, and his political and religious views. Not all this information was truthful or accurate, and besides all of it was

private information.

The Court of appeal followed John (supra) and awarded substantial damages. Earlier, in *Jameel v. Wall Street Journal* 2007 (1) AC 379, the rule was

re-stated as follows:

... under the current law of England and Wales a trading company with a trading reputation in this country may recover general damages without

pleading or proving special damage if the publication complained of has a tendency to damage it in the way of its business.

In the same judgment, the Court also reiterated the existing law that once defamations proved, the law presumes damage—a proposition which applies

to a trading company also. Further, the Court held that:

“The presumption of damage

119. Defamation constitutes an injury to reputation. Reputation is valued by individuals for it affects their self-esteem and their standing in the

community. Where reputation is traduced by a libel “the law presumes that some damage will flow in the ordinary course of things from the mere

invasion of the plaintiff’s rights” (Bowen L.J. in *Ratcliffe v. Evans* [1892] 2 QB 524 at 528). It is accepted that the rule applies and should continue to

apply to individuals. But it is argued that it should no longer be applied to corporations. Corporations, it is said, have no feelings to be hurt and cannot

feel shame. If they are to sue for libel they should be required to show that the libel has caused them actual damage.

120. These arguments, in my opinion, miss the point. The reputation of a corporate body is capable of being, and will usually be, not simply something

in which its directors and shareholders may take pride, but an asset of positive value to it. Why else do trading companies pay very substantial sums of

money in advertising their names in TV commercials which usually say next to nothing of value about the services or products on offer from the

company in question but endeavour to present an image of the company that is attractive and likely to cement the name of the corporation in the public

memory? Why do commercial companies sponsor sporting competitions, so that one has the XLtd. Grand National or the YLtd. Open Golf

Championship or the ZLtd. Premiership? It is surely because reputation matters to trading companies and because these sponsorship activities,

associating the name of the company with popular sporting events, are believed to enhance the sponsor’s reputation to its commercial advantage. The

organisers of a variety of activities some sporting, some cultural, some charitable, are constantly on the look-out for sponsorship of the activity in

question by some commercial company. The choice of sponsor and the reputation of the sponsor matter to these organisers. Who would these days

choose a cigarette manufacturing company to sponsor an athletic event or a concert in aid of charity? If reputation suffers, sponsorship invitations may

be reduced, advertising opportunities may become difficult, customers may take their custom elsewhere. If trade suffers, profits suffer.

121. It seems to me plain beyond argument that reputation is of importance to corporations. Proof of actual damage caused by the publication of

defamatory material would, in most cases, need to await the next month's financial figures, but the figures would likely to be inconclusive. Causation

problems would usually be insuperable. Who is to say why receipts are down or why advertising has become more difficult or less effective?

Everyone knows that fluctuations happen. Who is to say, if the figures are not down, whether they would have been higher if the libel had not been

published? How can a company about which some libel, damaging to its reputation, has been published ever obtain an interlocutory injunction if proof

of actual damage is to become the gist of the action?

122. There is no doubt that, as the case law now stands, a libel is actionable per se at the suit of a corporation as it is at the suit of an individual,

without the need to prove that any actual damage has been caused. In the South Hetton Coal Co. Ltd. case [1894] 1 QB 133 the plaintiff, a colliery

company, complained of a libel that had attacked the company in respect of its management of company houses in which some of its colliery workers

lived. The Court of Appeal held that the libel was actionable per se and, at p. 140, that "...the plaintiffs would be entitled to damages at large, without

giving any evidence of particular damage.

In the United States of America, too, the difficulty which a defamed or slandered claimant, particularly a commercial enterprise is put to in proving

empirically and accurately the damages or injury to its reputation and enterprise has been recognized. It was thus, held in Story Parchment Co. v.

Paterson Parchment Paper Co., 282 U.S. 555 (1931) that:

Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it is enough if the evidence show

the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to

complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making,

were otherwise..... If the damage is certain, the fact that its extent is uncertain does not prevent a recovery.

63. In the present case, the plaintiff (Reckitt) has been able to prove, successfully, that HUL telecast the impugned 30 second advertisement on a

large number of occasions (2763 times, to be precise, according to Ex. PW-1/19). The innuendo was cleverly designed to suggest that Reckitt's Dettol

Original caused damage to the skin. The advertiser, i.e. HUL, was conscious that it was crossing the boundary between permissible "puffing" and

what was prohibited in law. The evidence on record, in the form of HUL's witnesses' testimony, is that Rs. 2.5 crores was spent in July 2007 alone for

advertising its product. HUL also admitted during the trial that the Dettol Original brand was worth Rs. 200 crores. Such being the case, this Court

holds that the Single Judge's reluctance to award general damages was not justified. It would be necessary to mention in this context that it may not be

possible for an otherwise successful plaintiff, in a disparagement or slander of goods action to always quantify the extent of loss; there would

necessarily be an element of dynamism in this, because of the nature of the product, the season it is sold in, the possible future or long term impact that

may arise on account of the advertisement, etc. Therefore, courts the world over have resorted to some rough and ready calculations.

64. In view of the evidence presented before this Court (i.e. the number of times the advertisement was telecast, the quantum of advertisement

expenses of HUL, the amount spent by Reckitt, to advertise its product, etc) this Court is of opinion that the plaintiff is entitled to recover general

damages to the tune of Rs. 20 lakhs. The impugned judgment and order is modified to that extent, and the cross objection by Reckitt, is consequently

allowed in these terms.

65. As far as punitive damages are concerned, the learned Single Judge relied in Lokesh Srivastava and certain other rulings. Here, since the Court is

dealing with a final decree-and a contested one at that (unlike in the case of trademark and intellectual property cases, where the courts, especially a

large number of Single Judge decisions proceeded to grant such punitive damages in the absence of any award of general or quantified damages for

infringement or passing off), it would be necessary to examine and re-state the governing principles.

66. *Rookes v. Barnard*, [1964] 1 All ER 367, is the seminal authority of the House of Lords, on the issue of when punitive or exemplary (or sometimes

alluded to as ""aggravated"" damages can be granted. The House defined three categories of case in which such damages might be awarded. These

are:

a. Oppressive, arbitrary or unconstitutional action any the servants of the government;

b. Wrongful conduct by the defendant which has been calculated by him for himself which may well exceed the compensation payable to the

claimant; and

c. Any case where exemplary damages are authorised by the statute.

The later decision in *Cassell & Co. Ltd. v. Broome*, 1972 AC 1027, upheld the categories for which exemplary damages could be awarded, but made

important clarificatory observations. Those relevant for the present purpose are reproduced below:

A judge should first rule whether evidence exists which entitles a jury to find facts bringing a case within the relevant categories, and, if it does not, the

question of exemplary damages should be withdrawn from the jury's consideration. Even if it is not withdrawn from the jury, the judge's task is not

complete. He should remind the jury: (i) that the burden of proof rests on the plaintiff to establish the facts necessary to bring the case within the

categories. (ii) That the mere fact that the case falls within the categories does not of itself entitle the jury to award damages purely exemplary in

character. They can and should award nothing unless (iii) they are satisfied that the punitive or exemplary element is not sufficiently met within the

figure which they have arrived at for the plaintiff's solatium in the sense I have explained and (iv) that, in assessing the total sum which the defendant

should pay, the total figure awarded should be in substitution for and not in addition to the smaller figure which would have been treated as adequate

solatium, that is to say, should be a round sum larger than the latter and satisfying the jury's idea of what the defendant ought to pay. (v) I would also

deprecate, as did Lord Atkin in *Ley v. Hamilton*, 153 L.T. 384 the use of the word "fine" in connection with the punitive or exemplary element in

damages, where it is appropriate. Damages remain a civil, not a criminal, remedy, even where an exemplary award is appropriate, and juries should

not be encouraged to lose sight of the fact that in making such an award they are putting money into a plaintiff's pocket, and not contributing to the

rates, or to the revenues of central government.

(emphasis supplied).

The House of Lords, in its discussion, remarked crucially that there is a considerable subjective element in the award of damages in cases involving

defamation and similar actions. Courts, it remarked, used terminology to reflect overlapping, and sometimes undesirable ideas underlining the

considerations weighing grant of damages:

In my view it is desirable to drop the use of the phrase "vindictive" damages altogether, despite its use by the county court judge in *Williams v. Settle*

[1960] 1 W.L.R. 1072. Even when a purely punitive element is involved, vindictiveness is not a good motive for awarding punishment. In awarding

aggravated damages the natural indignation of the court at the injury inflicted on the plaintiff is a perfectly legitimate motive in making a generous

rather than a more moderate award to provide an adequate solatium. But that is because the injury to the plaintiff is actually greater and, as the result

of the conduct exciting the indignation, demands a more generous solatium.

Likewise the use of "retributory" is objectionable because it is ambiguous. It can be used to cover both aggravated damages to compensate the

plaintiff and punitive or exemplary damages purely to punish the defendant or hold him up as an example.

As between "punitive" or "exemplary," one should, I would suppose, choose one to the exclusion of the other, since it is never wise to use two quite

interchangeable terms to denote the same thing. Speaking for myself, I prefer "exemplary," not because "punitive" is necessarily inaccurate, but

exemplary better expresses the policy of the law as expressed in the cases. It is intended to teach the defendant and others that "tort does not pay

by demonstrating what consequences the law inflicts rather than simply to make the defendant suffer an extra penalty for what he has done, although

that does, of course, precisely describe its effect.

The expression "at large" should be used in general to cover all cases where awards of damages may include elements for loss of reputation, injured

feelings, bad or good conduct by either party, or punishment, and where in consequence no precise limit can be set in extent. It would be convenient if

as the appellants' counsel did at the hearing it could be extended to include damages for pain and suffering or loss of amenity. Lord Devlin uses the

term in this sense in *Rookes v. Barnard* [1964] A.C. 1129, 1221, when he defines the phrase as meaning all cases where "the award is not limited to

the pecuniary loss that can be specifically proved." But I suspect that he was there guilty of a neologism. If I am wrong, it is a convenient use and

should be repeated.

Finally, it is worth pointing out, though I doubt if a change of terminology is desirable or necessary, that there is danger in hypostatising

compensatory, "punitive," "exemplary" or "aggravated" damages at all. The epithets are all elements or considerations which may, but with the

exception of the first need not, be taken into account in assessing a single sum. They are not separate heads to be added mathematically to one

another.

67. In India, the Supreme Court has affirmed the principles in *Rookes* (supra) and *Cassell* (supra). Interestingly, however, the application in those

cases has been in the context of abuse of authority leading to infringement of Constitutional rights or by public authorities (ref. *Ghaziabad*

Development Authority v. Balbir Singh, MANU/SC/0282/2004 : (2004) 5 SCC 6; *Lucknow Development Authority v. M.K. Gupta*, MANU/SC/0178/1994 : 1994 SCC (1) 243). As yet, however, the Supreme Court has not indicated the standards which are to be applied while

awarding punitive or exemplary damages in libel, tortious claims with economic overtones such as slander of goods, or in respect of intellectual

property matters. The peculiarities of such cases would be the courts' need to evolve proper standards to ensure proportionality in the award of such

exemplary or punitive damages. The caution in *Cassell* that "[d]amages remain a civil, not a criminal, remedy, even where an exemplary award is

appropriate, and juries should not be encouraged to lose sight of the fact that in making such an award they are putting money into a plaintiffs

pocket.... " can never be lost sight of. Furthermore-and perhaps most crucially-the punitive element of the damages should follow the damages

assessed otherwise (or general) damages; exemplary damages can be awarded only if the Court is "satisfied that the punitive or exemplary element is

not sufficiently met within the figure which they have arrived at for the plaintiffs solatium". In other words, punitive damages should invariably follow

the award of general damages (by that the Court meant that it could be an element in the determination of damages, or a separate head altogether, but

never completely without determination of general damages).

68. This court is of the opinion that the impugned judgment fell into error in relying on the decision in *Times Incorporated v. Lokesh Srivastava*

MANU/DE/0104/2005 : 116 (2005) DLT 569. A Single Judge articulated, in his ex parte judgment in a trademark infringement action, as follows:

This Court has no hesitation in saying that the time has come when the Courts dealing actions for infringement of trade-marks, copy rights, patents

etc. should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who

indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the

aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them. In Mathias v. Accor Economy Lodging,

Inc. reported in 347 F.3d 672 (7th Cir. 2003) the factors underlying the grant of punitive damages were discussed and it was observed that one

function of punitive damages is to relieve the pressure on an overloaded system of criminal justice by providing a civil alternative to criminal

prosecution of minor crimes. It was further observed that the award of punitive damages serves the additional purpose of limiting the defendant's

ability to profit from its fraud by escaping detection and prosecution. If a tortfeasor is caught only half the time he commits torts, then when he is

caught he should be punished twice as heavily in order to make up for the times he gets away. This Court feels that this approach is necessitated

further for the reason that it is very difficult for a plaintiff to give proof of actual damages suffered by him as the defendants who indulge in such

activities never maintain proper accounts of their transactions since they know that the same are objectionable and unlawful. In the present case, the

claim of punitive damages is of Rs. 5 lacs only which can be safely awarded. Had it been higher even, this court would not have hesitated in awarding

the same. This Court is of the view that the punitive damages should be really punitive and not fee bite and quantum thereof should depend upon the

flagrancy of infringement.

With due respect, this Court is unable to subscribe to that reasoning, which flies on the face of the circumstances spelt out in Rookes and later

affirmed in Cassel. Both those judgments have received approval by the Supreme Court and are the law of the land. The reasoning of the House of

Lords in those decisions is categorical about the circumstances under which punitive damages can be awarded. An added difficulty in holding that

every violation of statute can result in punitive damages and proceeding to apply it in cases involving economic or commercial causes, such as

intellectual property and not in other such matters, would be that even though statutes might provide penalties, prison sentences and fines (like under

the Trademarks Act, the Copyrights Act, Designs Act, etc) and such provisions invariably cap the amount of fine, sentence or statutory compensation,

civil courts can nevertheless proceed unhindered, on the assumption that such causes involve criminal propensity, and award ""punitive"" damages

despite the plaintiffs inability to prove any general damage. Further, the reasoning that ""one function of punitive damages is to relieve the pressure on

an overloaded system of criminal justice by providing a civil alternative to criminal prosecution of minor crimes"" is plainly wrong, because where the

law provides that a crime is committed, it indicates the punishment. No statute authorizes the punishment of anyone for a libel-or infringement of

trademark with a huge monetary fine-which goes not to the public exchequer, but to private coffers. Moreover, penalties and offences wherever

prescribed require the prosecution to prove them without reasonable doubt. Therefore, to say that civil alternative to an overloaded criminal justice

system is in public interest would be in fact to sanction violation of the law. This can also lead to undesirable results such as casual and unprincipled

and eventually disproportionate awards. Consequently, this court declares that the reasoning and formulation of law enabling courts to determine

punitive damages, based on the ruling in Lokesh Srivastava and Microsoft Corporation v. Yogesh Papat and Another, MANU/DE/0331/2005 : 2005

(30) PTC 245 (Del) is without authority. Those decisions are accordingly overruled. To award punitive damages, the courts should follow the

categorization indicated in Rookes (supra) and further grant such damages only after being satisfied that the damages awarded for the wrongdoing is

inadequate in the circumstances, having regard to the three categories in Rookes and also following the five principles in Cassel. The danger of not

following this step by step reasoning would be ad hoc judge centric award of damages, without discussion of the extent of harm or injury suffered by

the plaintiff, on a mere whim that the defendant's action is so wrong that it has a ""criminal"" propensity or the case merely falls in one of the three

categories mentioned in Rookes (to quote Cassel again-such event ""does not of itself entitle the jury to award damages purely exemplary in

character"").

69. Reverting to the facts of this case, the defendant clearly was aware about its wrong doing and the harm which would ensue to HUL because of

the published disparagement. Yet it went ahead and aired it in almost all the national and a large number of regional channels with repetitiveness. The

deliberation points at an aim to denigrate the plaintiffs product and harm its reputation. At no stage did it-even in these proceedings-offer to make

amends. In the circumstances, the award of punitive damages was warranted. The award of general damages through this judgment (although of a

figure of Rs. 20 lakhs) is moderate, since the advertisement was aired over 2700 times and seen-and intended to be seen-by millions of viewers. As

observed in John (supra)

The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of

people.

Having regard to all these circumstances, the court is of opinion that the award of Rs. 5 lakhs as exemplary damages in the facts of this case was

justified and not disproportionate; it is accordingly upheld.

In view of the above discussion, it is held that this appeal has no merit. It is accordingly dismissed, but with costs, quantified at Rs. 55,000/-. The cross

objections however succeed and the decree of the learned Single Judge shall be modified. In addition to injunction and punitive damages assessed by

the impugned judgment, the plaintiff/Reckitt is also entitled to a decree for Rs. 20 lakhs. The cross objections are allowed to that extent. The plaintiff

shall in addition to the costs of the appeal, be also entitled to costs of the cross objection and counsel's fee, assessed at Rs. 25,000/-.

14.6 In Indian Television (Supra) relied upon by the defendant, the Division Bench held that the factors commonly considered by the Courts in

applying de minimis are well listed and five in number: (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 wrong doer. A perusal of the cue sheets exhibited vide PW-

2/6 to 2/8 shows 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 Rs. 21,00,600/- which is reasonable and is thus awarded.

However, the plaintiff has led no evidence to prove punitive damages.

15. Consequently, the suit is decreed in favour of the plaintiff and against the defendant directing a permanent injunction in terms of prayer (i) of the

plaint. The compensatory damages are fixed at Rs. 21 lakhs to be paid by the defendant to the plaintiff. Cost of Rs. 22,900/- as deposited for Court

fees is also awarded in favour of plaintiff and against the defendant.