

HOTEL RESTAURANT ASSOCIATION OF EASTERN INDIA

From: HOTEL & RESTAURANT ASSOCIATION OF EASTERN INDIA [info@hraei.co.in]
Sent: Thursday, April 28, 2016 7:04 PM
To: 'hraeik@gmail.com'
Subject: LANDMARK JUDGEMENT AGAINST IPRS
Attachments: image001.jpg; Certified copy of order dated 08 04 16.pdf

April 28, 2016

To All HRAEI Members

Dear Fellow Members,

All of us have been facing huge demand /arm twisting/ extortion from IPRS (The Indian Performing Rights Society Ltd.) and they have been forcibly collecting license fees from our fraternity members.

IPRS had demanded huge amount as license fee from one of our member for communicating the literary and mechanical work of IPRS inter alia through TVs. The said member refused to accede to the demands of IPRS upon which IPRS had filed an injunction application restraining the said member from broadcasting the literary and mechanical work of IPRS inter alia through TVs and obtained injunction order against the said member.

Your association took up the matter and challenged the injunction in court of law with the best legal team and left no stone unturned to safeguard the interest of the members.

Members would be pleased to know that order passed by the Civil Court, at Calcutta restraining one of our respective members from communicating the literary and mechanical work of IPRS inter alia through TVs without obtaining a license on payment of requisite license fees from IPRS has been vacated by the Learned Judge of the Civil Court, at Calcutta by a landmark judgment and order dated 7th April, 2016.

The Learned Judge has held that the injunction petition does not disclose that a consumer of cable line is liable to pay license fee through IPRS. The Learned Judge also held that IPRS has not made out a case for obtaining injunction and it is not a fit case to allow injunction in favour of IPRS. Accordingly, the injunction prayer made by IPRS was refused and injunction petition disposed of, ad interim injunction vacated.

There is no restraining therefore against our respective members who had been sued by IPRS from communicating the literary and mechanical work of IPRS inter alia through TVs at its hotel upon payment of license fees. Of course the suit is still pending and the matter is sub-judice.

Let me assure all our members that our association is at your service and shall fight tooth and nail to safe guard the interest of the members.

If any member is harassed by IPRS, kindly inform the association.

Regards,

Sudesh Poddar
President

Enclosed: Certified Copy of the Judgment in IPRS matter.



Hotel & Restaurant Association of Eastern India

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2999B Cr. 12/9/16

12/04/16

IN THE CITY CIVIL COURT AT CALCUTTA

BEFORE THE LD. VIITH BENCH JUDGE

TITLE SUIT NO. 41 OF 2014

THE INDIAN PERFORMING RIGHT SOCIETY ... PLFT.

- Vs -

METRO MERCHANTS PVT. LTD. ... DEFT.



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T.S. - 41/2014Order NO.41
07.04.2016

The case record is placed for order in the matter of injunction petition under Order 39 Rules 1 and 2 read with Section 151 of the C.P.C stating inter alia that the plaintiff is a Company Limited by guarantee and registered under the Companies Act, 1956 and also registered as a Copy Right Society under Section 33 of the Copy Right Act, 1957 and ^{and interested} interested the work to collect tariffs and license fee from the users of the music and sound on behalf of the renowned artists. It is alleged that the defendant has been using the music and sound without obtaining payment of license fee from the plaintiff and as a result of which the plaintiff suffered a huge amount of loss of license fee from the defendant and also committed infringement of the copy right of the plaintiff and on this score prayed for injunction order against the defendant.

The defendant filed a written objection and stating inter alia, that the defendant is not bound to pay any fees to the plaintiff for amusement of the songs and the plaintiff has no locus standi to file the present suit and prayed for injunction. It is further stated in the written objection by the defendant that the present suit is not maintainable in view of the provisions of TRAI Act, Cable Television Networks (Regulation) Act, 1995 and regulations framed there under. It is categorically stated in the written objection by the defendant that regarding Cable, DTH signal, a hotel is a consumer and a subscriber of cable television vide clarification Hon'ble Supreme Court in (2006) 13 SCC 753 and a hotel does not transmit/ re-transmit or distribute the signal received by it and so there is no question of the Copy Right Act be applied against the defendant. The defendant also stated in the written objection that Section 61 of the Copy Right Act and for misjoinder of parties and the present suit is not maintainable for misjoinder of parties and the M/s. Paramount Hotel is a firm in partnership and engaged in the hospitality business and runs the said business in the name and style of Hotel Paramount and the defendant hotel does not have any commercial link with the defendant and it is further stated in the written objection that the plaintiff has no locus standi to institute the present suit against the defendant since the plaintiff has not registered under the Copy Right Amendment Act, 2012 within one year from the date of commencement of the Copy Right Amendment Act, 2012 and the plaintiff is not a registered society as it pleaded by the plaintiff before the Hon'ble High Court, Bombay in connection with Writ Petition No.1499 of 2014 and on this score the defendant prayed for rejection of the injunction petition and also prayed for vacating the ad interim injunction order.

Having heard Ld. Advocates on behalf of the respective parties. Perused the injunction petition, filed affidavit, written objection filed by the defendant and

TS 41/14

other materials on record, it is undisputed that the plaintiff has not received registration within one year from the date of commencement of the Copy Right Amendment Act, 2012. It is also undisputed that there is no material that the defendant is transmit the signal and not taking service from the cable operators in the premises of the defendant Hotel Paramount. There is no specific allegation against the defendant in the injunction petition that the defendant is running amusement and committed violation of the Copy Right without taking license and payment of fees to the plaintiff, though the plaintiff is not registered under the Copy Right Amendment Act, 2012 within one year from the commencement of the said act. The injunction petition does not disclose that a consumer of cable line is liable to pay license fee to the plaintiff. After going through the materials on record and it is the view of the court that the plaintiff is not made out a case for obtaining injunction order against the defendant and it is not a fit case to allow the injunction ~~petition~~ in favour of the plaintiff. It may be mentioned here that the written statement has already been filed by the defendant. So, the principal controversies may be adjudicated after adducing and recording evidence of the both parties. There is no sufficient material to come the conclusion that the plaintiff would suffer irreparable loss or injury in the event of refusal of the injunction petition.

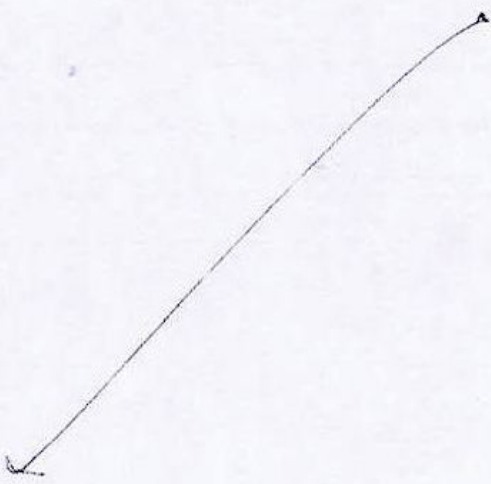
Accordingly the injunction prayer made by the plaintiff is hereby refused and the injunction petition is finally disposed of and the ad interim injunction order, if any, is hereby vacated.

Fix 1/6/16 for filing w/s subject to
Statutory period.

D/C by me


Judge 7th Bench


Judge





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