

MANU/DE/0940/2008

Equivalent Citation: MIPR2008(2)465

IN THE HIGH COURT OF DELHI

IA 2399-2400/2006 in CS(OS) 1774/2005

Decided On: 02.07.2008

Appellants: **Phonographic Performance Ltd.**
Vs.

Respondent: **Lizard Lounge and Ors.**

Hon'ble Judges/Coram:

Badar Durrez Ahmed, J.

Counsels:

For Appellant/Petitioner/plaintiff: Sandeep Sethi, Sr. Adv., Praygan Sharma and Kanika Mehra, Advs.

For Respondents/Defendant: Naushad Alam, Adv. for Defendant No. 5, K.K. Sharma, Adv. for the Defendant Nos. 4 and 9, Pratibha M. Singh and Pema Yeshey, Advs. for Defendant No. 7, Bimla Sharma, Adv. for Defendant Nos. 11 and 15 and D.R. Bhatia, Adv. for Defendant No. 13

Subject: Intellectual Property Rights

Acts/Rules/Orders:

Code of Civil Procedure (CPC) - Order 7 Rule 11; Copyright Act, 1957 - Section 33, Copyright Act, 1957 - Section 34, Copyright Act, 1957 - Section 61

Case Note:

Intellectual Property Rights - Maintainability of suit - (1) Whether, in view of provisions of Sections 33 and 34 of the Copyright Act, 1957 (the Act) , a suit for infringement of copyright would be maintainable at the instance of a registered copyright society in absence of owner of copyright? - (2) Whether, in view of the provisions of section 61 of the Act, inasmuch as owner of copyright had not been made a party to present suit, the same would be liable to be rejected on ground of non-impleadment of a necessary party? - Held, suit at the instance of registered copyright society (the Plaintiff) would not be maintainable - Reasoning employed in that decision would apply with equal vigour to present case - Consequently, plaint in present suit rejected.

JUDGMENT

Badar Durrez Ahmed, J.

1. As indicated in the order dated 19.03.2008, the counsel appearing for the defendant No. 7 as well as the counsel appearing for the defendants 4 and 9 had raised the issue of maintainability of the present suit. The identical issue had been raised in a similar suit filed by the same plaintiff. Detailed arguments had been addressed in an application under Order 7 Rule 11, CPC [IA No. 334/2005] in the said suit [CS(OS) 1498/2004]. The counsel for the parties are the same and they reiterated the arguments made in that application for the present suit also.

2. The said is 334/2005 has been allowed by a detailed judgment delivered today. The plaint in CS(OS) 1498/2004 has been rejected. The following two questions had been considered in that application:

1. Whether, in view of the provisions of Sections 33 and 34 of the Copyright Act, 1957, a suit for infringement of copyright would be maintainable at the instance of a registered copyright society in the absence of the owner of the copyright?

2. Whether, in view of the provisions of section 61 of the Copyright Act, 1957, inasmuch as the owner of the copyright has not been made a party to the present suit, the same would be liable to be rejected on the ground of non-impleadment of a necessary party ?

By virtue of the judgment in is 334/2005, in answer to the said questions, it has been held that the suit at the instance of the registered copyright society (the plaintiff herein) would not be maintainable. The reasoning employed in that decision would apply with equal vigour to the present case. Consequently, the plaint in the present suit is also liable to be rejected. It is ordered accordingly.

manupatra 3. All interim orders stand vacated and any other pending applications also stand disposed of.

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