



2025:DHC:8522-DB



\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 31.07.2025
Judgment pronounced on: 24.09.2025

+ FAO(OS) (COMM) 86/2025 & CM APPL. 27354/2025

MR. AR RAHMAN

.....Appellant

Through: Mr. Saikrishna Rajagopal, Ms. Sneha Jain, Mr. Vivek Ayyagari, Mr. Kuber Mahajan, Mr. Akshat Agrawal, Ms. Vaishnavi Rao & Ms. Arunima Nair, Advs.

versus

USTAD FAIYAZ WASIFUDDIN DAGAR
& ORS.

.....Respondents

Through: Mr. Neel Mason, Mr. Arjun Harkauli, Mr. Vihan Dang, Mr. Ujjawal Bhargava and Mr. Abeer Shandilya, Advs. for R-1

Mr. Gautam S. Raman, Adv. for R-2 & R-3

Mr. Deepank Singhal and Mr. Gaurav Dhingra, Advs. for R-4

Mr. Anukool Chawla and Mr. Ankit Kothari, Advs. for R-5 & R-6

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT
24.09.2025

%

OM PRAKASH SHUKLA, J.

INTRODUCTION

1. The appellant has preferred the present appeal under Section 13(1) of the Commercial Courts Act, 2015¹ read with Order XLIII

¹“CC Act”, hereinafter



2025:DHC:8522-DB



Rule 1(r) and Section 151 of Code of Civil Procedure, 1908², challenging the judgment dated 25.04.2025 delivered by the learned Single Judge of this Court, whereby the application filed by the Respondent No.1 under Order XXXIX Rule 1 & 2 of the CPC (I.A. No. 21148 of 2023 in CS (Comm) No. 773 of 2023) titled “***Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman & Ors***”³ was partly allowed and disposed of accordingly.

2. For the sake of convenience, the parties to the present appeal would be referred by the same status and name as they have been in the pending civil suit before the learned Single Judge. Thus, the appellant would be addressed as “Defendant No.1” and the Respondent No.1 would be referred as “Plaintiff” and so on and so forth.

3. The plaintiff Ustad Faiyaz Wasifuddin Dagar, is a Padma Shri awardee and a distinguished exponent of the “Dagarvani” style of Dhrupad classical music. He is the son of late Ustad N. Faiyazuddin Dagar, and nephew of late Ustad N. Zahiruddin Dagar also popularly known as the “**Junior Dagar Brothers**”. The defendants are: Mr. A.R. Rahman, appellant/ Defendant No.1 an acclaimed music composer, along with Madras Talkies and Lyca Productions Pvt Ltd (“Defendant Nos. 2 and 3”), Tips Industries Ltd (“Defendant No. 4”), and vocalists Mr. Shivam Bharadwaj and Mr. Arman Ali Dehlvi (“Defendant Nos. 5 and 6”). Briefly stating, the plaintiff had filed the civil suit before the learned Single Judge seeking *inter alia*, relief of

²“CPC”, hereinafter

³2025: DHC:2907



permanent and mandatory injunction for recognition of copyright in the musical composition titled “**Shiva Stuti**” (Suit Composition) along with an interlocutory application, seeking, *inter alia*, appropriate directions to the defendants to give credit to the original authors / composers of the Suit Composition, namely Late Ustad N. Faiyazuddin Dagar and Late Ustad Zahiruddin Dagar during every payout of the impugned song across all modes and mediums including digital, internet, Over-The-Top platforms, satellite, cable television etc.

4. The plaintiff also sought to restrain Defendant Nos. 1 to 4 (appellant and proforma Respondent Nos. 2-4 respectively) from utilizing the Suit Composition as part of sound recording of the song “**Veera Raja Veera**” without obtaining authorisation from Respondent No. 1 / plaintiff and without attribution of moral rights to the Junior Dagar Brothers (namely Late Ustad N. Faiyazuddin Dagar (father of the Respondent No.1/plaintiff) and Late Ustad Zahiruddin Dagar (uncle of the Respondent No.1/plaintiff), hereinafter referred to as the “Junior Dagar Brothers”), who claims as to be the alleged original authors / composers of the Suit Composition.

5. By way of the impugned judgment, the learned Single Judge has partly allowed the plaintiff's prayer and, *inter alia* directed:

“I. The replacement of the current slide depicting Credits of the Songs with a New Slide as follows:

Current Slide:

“Composition based on a Dagarvani Tradition Dhrupad”

New Slide:

“Composition based on Shiva Stuti by Late Ustad N. Faiyazuddin



2025:DHC:8522-DB



Dagar and Late Ustad Zahiruddin Dagar".

II. To the Defendants No. 1 to 3 to "deposit a sum of 2,00,00,000 (Rupees Two Crores only) which shall be kept in a Fixed Deposit in the account of the worthy Registrar General of this Hon'ble Court and the same shall be subject to the outcome of the trial in the suit. The said deposit shall be without prejudice to the rights and contentions of the parties.

III. Imposed costs of 2,00,000 (Rupees Two Lakhs only) on the Defendants No. 1-3, to be paid to the Respondent No.1 within four weeks."

6. Aggrieved by the impugned judgment, the appellant prays through this present appeal seeking the following reliefs:

"i. Allow the present appeal and set aside the Impugned Judgment dated 25.04.2025 as delivered by the Learned Single Judge in I.A. No. 21148 of 2023 in CS (COMM) 773 of 2023.

ii. Dismiss the Injunction Application i.e., I.A. No. 21148 of 2023 in CS (COMM) 773 of 2023, filed by the Respondent No. 1 / Plaintiff; and

iii. Pass such further or other orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case."

7. The plaintiff asserted his authorship and copyright over the musical composition "*Shiva Stuti*" and claimed that Defendant No.1 used it in his song "*Veera Raja Veera*" featured in the Tamil movie "*Ponniyin Selvan – II*", released on 08.04.2023, and for which the Defendant No.1 A.R. Rahman, has composed the music. According to the plaintiff, the film credits and acknowledges that the song was based on a "Dagarvani Tradition Dhrupad" - a broad stylistic approach to Hindustani Classical Music, however it does not give any credit to him, although the song composition is based on "*Shiva Stuti*" by Late Ustad N. Faiyazuddin Dagar and Late Ustad Zahiruddin Dagar.

PRELUDE TO THE DISPUTE



2025:DHC:8522-DB



8. The brief facts in which the present appeal arises is that the plaintiff claims that the Junior Dagar Brothers had together, in particular, written and composed the song “*Shiva Stuti*” around the year 1970s and as such, the Junior Dagar Brothers were the authors and therefore the first owners of the copyright in the Suit Composition and the lyrics therein. In a nutshell, it has been claimed that the Suit Composition is a work of joint authorship of the Junior Dagar Brothers. The plaintiff claims that ownership of the copyright stood transferred from Junior Dagar Brothers to him pursuant to an oral family settlement agreement between the legal heirs of the Junior Dagar Brothers.

9. The plaintiff claims that he uses the Suit Composition as well as other Bandish/compositions to train his students. Neither he nor the Junior Dagar Brothers ever permitted or authorised any disciple or third party to commercially exploit or publicly perform the Suit Composition. At the same time, the plaintiff contends that he has granted limited licences to certain music labels and institutions to utilise the Suit Composition for study and training purposes only.

10. It is the case of the plaintiff that his disciples namely, Mr. Shivam Bharadwaj, Defendant No. 5 and Mr. Annan Ali Dehlvi, Defendant No. 6, who had the knowledge of the Suit Composition of “*Shiva Stuti*”, had approached the Defendant No. 1 and shared the “*Shiva Stuti*” composition/bandish with the Defendant No. 1, without the Plaintiff's authorisation or consent. Thereafter, somewhere in the month of April, the plaintiff was surprised to see that the Suit



2025:DHC:8522-DB



Composition had been incorporated in the sound recording of the Impugned Song “*Veera Raja Veera*” and the same was being *inter alia* stored, reproduced, communicated to the public at large without obtaining a valid license from the Plaintiff.

11. The impugned song features in a Tamil film “*Ponniyin Selvan – II*”, released theatrically on 28.04.2023 and on OTT platforms in June 2023, with Defendant No.1, A.R. Rahman, composer of the music for the film. The plaintiff alleged that this impugned song incorporated substantial and protectable parts of “*Shiva Stuti*”, reproducing its distinctive swar patterns, rhythmic structure and what was described as the “main part” or “soul” of the composition, even when transposed to a different key.

12. The plaintiff, upon learning of the alleged unlawful utilisation of the Suit Composition by the defendants, wrote a letter to Defendant No.1 and Mr. Mani Ratnam, regarding alleged infringement of moral rights of the Junior Dagar Brothers and copyright of the plaintiff over the Suit Composition. The plaintiff also suggested resolving the dispute with mutual consent of the parties since the impugned song had already been released.

13. It is alleged that Defendant No.1 had assured the plaintiff via phone call on 14.03.2023 that moral rights of the Junior Dagar Brothers shall be duly acknowledged and requested for some time to speak with the production team of the film in respect of the said



2025:DHC:8522-DB



assurances. However, plaintiff did not receive any response from Defendant No.1.

14. Thereafter, plaintiff issued a legal notice to the Defendant No.1 vide email dated 20.04.2023. In the said email, the plaintiff, *inter alia*, expressed his willingness to grant a non-exclusive license in the Suit Composition to the Defendant No. 1 and also quantified the amount that would be payable for such non-exclusive license for the plaintiff's work. However, in response to the letter dated 13.04.2023 and email dated 20.04.2023, the Defendant No.2 – Madras Talkies issued a reply dated 24.04.2023, whereby, all claims of the plaintiff qua the suit composition had been rejected.

PROCEEDINGS BEFORE THE LEARNED SINGLE JUDGE

15. Consequently, the plaintiff filed a suit for “*permanent and mandatory injunction seeking recognition of moral rights and restraining infringement of copyright and moral rights, damages and rendition of accounts*” along with an application under Order XXXIX Rule 1 & 2 of the CPC seeking, *inter alia*, appropriate directions to the defendants to give credit to the original authors/composers of the Suit Composition, namely Late Ustad N. Faiyazuddin Dagar and Late Ustad Zahiruddin Dagar during every playout of the impugned song across all modes and mediums including digital, internet, Over-The-Top platforms, satellite, cable television and other reliefs as mentioned above.



2025:DHC:8522-DB



16. The plaintiff's case as per the application filed under Order XXXIX Rule 1 & 2 of the CPC is that Junior Dagar Brothers jointly authored a Dhrupad composition titled "*Shiva Stuti*" in *Raag Adana*, set to a 10-beat Sul Taal, sometime in the 1970s, and that following their demise in 1989 and 1994, the copyright in the work devolved exclusively upon him pursuant to an oral family settlement of 1994. The plaintiff relies on the performance of the composition at the Royal Tropical Institute, Amsterdam, on 22.06.1978, which was recorded and later partially published by PAN Records in the form of an album titled "*Shiva Mahadeva*", by the Dagar Brothers. The plaintiff produced a copy of the Compact Disc⁴ of that performance, and the associated inlay card of the album *Shiva Mahadeva* and also an undated diary noting containing the lyrics along with a letter dated 10.10.2023 signed by a few family members confirming the alleged settlement to claim ownership and copyright over the suit composition.

17. The plaintiff through their interim application submitted that the '*taal*' of the Suit Composition has been made of 10 beats and the same 10 beats have been copied by the Defendant Nos. 1 to 4 to form the taal in the impugned song. Furthermore, the Defendant Nos. 1 to 4 have also copied the swar that have been used in the Suit Composition and incorporated the same in the impugned song. Also, the main part or rather the soul of the impugned song is a complete copy of the Suit Composition as the impugned song has the exact same swars and are being repeated in intervals during the whole impugned song.

⁴"CD", hereinafter



2025:DHC:8522-DB



However, he denies copying of the remaining part of the impugned song.

18. The plaintiff also pointed out that while the initial utilisation/communication to the public of the audio-visual song did not cite/specify the plaintiff's composition as part of the song credits, the Defendant Nos. 1 to 4, after exchange of correspondences between the parties, now state that the Suit Composition incorporated in the Impugned Song is inspired by traditional "*Dhrupad/Dagarvani tradition*". Thus, the Defendant Nos.1 to 4 have effectively acknowledged that there is a "*Dagarvani Dhrupad*" composition which has been utilised in the Impugned Song.

19. The Defendant No.1 in their reply of the interim application denied the claims of the respondent and submitted that they have failed to prove that the Suit Composition is an original musical work authored by the Junior Dagar Brothers. It has also been submitted that Suit Composition is a traditional composition within the *Dhrupad* genre of Hindustani classical music, which is primarily passed on through oral tradition, and has been publicly performed and published by various renowned artists, and is freely available in the public domain, none of whom credit or attribute the Suit Composition to the Junior Dagar Brothers or the plaintiff.

20. The Defendant No.1 further refuted the reliance placed on by the plaintiff on the CD and the in-lay card and described it as just a performance and demonstration of *Raag Adana* in the *Dhrupad*



2025:DHC:8522-DB



tradition without indicating originality or creativity. They submitted that the CD has no mention of the fact that it is their original and exclusive composition.

21. The Defendant No.1 further contended that various disciples and practitioners, have performed identical renditions of “*Shiva Stuti*” in *Raga Adana* such as Ustad Zia Fariduddin Dagar and his disciple Pandit Ritwik Sanyal, H. Sayeeduddin Dagar, the Gundecha Brothers, Pandit Uday Bhawalkar, Pandit Nirmalya Dey, and others. Thus, it has been contended that the *Dagarvani* or Dagar style of Hindustani classical music, from which the plaintiff claims authorship, constitutes a broader tradition spanning multiple generations, lineages and practitioners. Members of other branches of the Dagar family contemporaneous with the Junior Dagar Brothers, as well as third-party musicians, have performed compositions in *Raga Adana* identical to the Suit Composition, together with their disciples. Hence, the plaintiff or the Junior Dagar Brothers alone cannot assert exclusive copyright in the Suit Composition.

22. The defendants further submitted through their reply that the Suit Composition is based on the Dagarvani/Dhrupad genre for which credits have already been given. Further, even the diary noting relied upon by the plaintiff are merely lyrics and as such, do not sufficiently demonstrate that the Junior Dagar Brothers composed the musical work.



2025:DHC:8522-DB



23. It has also been contended that the Suit Composition consists of sequence of notes that are essential and fundamental features of the Raga itself that follows a prescribed discipline and therefore are not capable of copyright protection. The defendants further asserted that granting protection would promote a monopoly adversely affecting the artists and composers of Hindustani classical as also Carnatic music. They also argued that the alleged oral family settlement of 1994 being supported only by a letter signed by three individuals while ignoring other Dagar family members who have all performed “*Shiva Stuti*” in a similar form, cannot prove transfer of any copyright.

24. Other defendants, including the co-producers (Defendants No. 2 and 3), the music label (Defendant No. 4) and the singers (Defendants No. 5 and 6) adopted similar stands either denying any role in composition or asserting that the Suit Composition is traditional and existed in the public domain. They further relied upon numerous public renditions of the Suit Composition without attribution to the Junior Dagar Brothers. The defence even cited historic compositions such as Amir Khusro’s “*Yaar-e-man BiyaBiya*” to show centuries old precedents for the musical motifs in question.

25. The defendants challenged the arguments of plaintiff stating that neither Junior Dagar Brothers nor plaintiff ever permitted their students to utilise the song in any manner whatsoever for any commercial exploitation/performances by citing some commercial album CDs of Gundecha Brothers (disciples of Ustad Zia Mohiuddin Dagar and Ustad Zia Fariduddin Dagar) of the year 1991 which has



2025:DHC:8522-DB



the track “*shivashivashiva*” identical to Suit Composition. It was submitted that the impugned song is not substantially similar to Suit Composition by showing and comparing notational chart of the same, as it merely shows that the defendant is only following, the discipline of Raga which is in adherence to Raga rules rather than copying.

26. Further, it was also submitted that there is a distinction between copyright in musical performances and copyright in underlying musical works and the two cannot be conflated and that plaintiff can be only entitled to performance rights under Section 38 of the Copyright Act, 1957⁵, which cannot be conflated with the rights of the authorship.

27. Thus, it was contended by the defendants that the plaintiff failed to establish a *prima facie* case as there lies no cause of action in favour of the plaintiff as he had failed to demonstrate ownership of copyright or moral rights in “*Shiva Stuti*” to file the interim application. Therefore, any claim by the plaintiff seeking relief against alleged infringement of his purported copyright holds no water.

28. The plaintiff, in rejoinder, submitted that the Suit Composition can be a subject matter of copyright as permutations and combinations within the rubric of a Raga are innumerable, therefore, there can be multiple original compositions following the principles of the same Raga, each distinct from one another.

⁵“Act”, hereinafter



29. It was further submitted on behalf of the plaintiff that in cases where music is traditionally transmitted orally, authorship and/or ownership in respect of a particular composition comes into existence, once the said composition is expressed in a definite form and fixed in a tangible medium and thus in this regard reliance was placed on the performance at the Royal Tropical Institute, Amsterdam, on 22.06.1978, as constituting fixation for the purpose of claiming authorship.

30. The plaintiff submitted that in any event, plaintiff being one of the owners of the Suit Composition, still has the right to sue for infringement of copyright and for infringement of moral rights in the capacity of the legal representative of the Junior Dagar Brothers.

31. The contention of the defendants that Suit Composition is also used by other disciples was denied by the plaintiff. The plaintiff asserted that the mere performance of the Suit Composition by others does not extinguish his rights. He further submitted that the disciples who performed the Suit Composition did so only after the 1978 concert by the Junior Dagar Brothers, and such performances were made with the permission or blessings of either the Junior Dagar Brothers or the plaintiff.

IMPUGNED JUDGMENT

32. The learned Single Judge undertook a detailed analysis under the Act. The impugned judgment acknowledged the historical “tryst” between Indian classical music and copyright law, noting the



2025:DHC:8522-DB



evolution of the Act to protect traditional creative works. It highlighted that the unamended definition of “musical work” prior to 1995 (requiring graphic notation) was problematic for Indian classical music, which traditionally was taught orally.

33. The learned Single Judge noted the significance of the 1995 amendment to Section 2(p) of the Act defining musical work and the introduction of Section 2(ffa) defining composer, which ensured that graphical notation is no longer a pre-requisite for copyright protection in India and clarified that fixation is not mandatory in context of Indian classical music. It was further observed that the Act now recognizes the rights of composers irrespective of whether the work is reduced to writing, together with the value addition of singers and the rights of performers. Consequently, a composition in Indian classical music is protectable as long as it is an original work, even without written notation, as recorded performances suffices the requirement “fixation”.

34. The learned Single Judge observed that under Section 13 of the Act, musical works constitute protected subject matter if they exhibit “**originality**”, The judgment recognized that while classical music is bound by the structural rules of ragas and taals, there is scope for originality in the specific selection, arrangement, and expressive execution of these building blocks analogous to writing original literary works using the same language and grammar as any other author.



35. On the issue of whether the Suit Composition qualifies as an original musical work entitled to copyright protection, the impugned judgment observed that every work or composition which is made in a particular genre or *Raga* or style follows the basic principles of the said genre or *Raga* and it cannot be said that due to the fact that they follow a particular discipline, there cannot be any originality in the same. The learned Single Judge relied on the judgment of ***Eastern Book Company V. D.B. Modak***,⁶ wherein the Court has laid down that originality in works does not require the same to be novel or non-obvious as is the case for a valid patent, rather, the work should be a result of skill and judgment of the author.

36. The learned Single Judge further emphasized on originality that in a composition based on Hindustani classical music the composer has the option to select the finite elements or principles of a *Raga* and compose the same in infinite possible arrangements. Further, it is discussed that it is not the individual notes or *swaras* of the *Raga* that the composer may claim copyright on, rather, it is this original expression in the form of selection and arrangement of the common building blocks, requiring high level of skill and understanding of the nuances of Hindustani classical music, that the composer can be accorded protection under the Act.

37. Thereafter, the learned Single Judge relied on the published CDs, the alleged family agreement and observed that the Suit

⁶(2008) 1 SCC 1



Composition is based on *Raga Adana* and it is the original work of the plaintiff as there is no material to the contrary, in the following words:

“137. Coming to the Plaintiff’s work, the various documents place on record, which are also discussed above, including earlier published CDs, agreements, etc. would show that suit composition, which is based on Raga Adana, is the original work of the Junior Dagarvani Brothers. There is no other work/rendition, which has been placed before the Court, which would demonstrate that the same was either copied from anywhere or was inspired from any other work. The only work that deserves to be considered is the composition of Amir Khusro, which is known as “Yaar-e-man BiyaBiya”. The mere comparison of notes of the suit composition and Amir Khusro’s composition would show that musical works are not identical and they also sound different, when they are played.

138. The recognition of originality of the suit composition at the prima facie stage is clearly based on verifiable evidence dating back to 1970s. There is no evidence to dislodge arguments of originality of the Plaintiff’s work. The Defendant No.1 has himself placed on record the musical notes of the suit composition and Amir Khusro’s composition, which would show that the Swaras though appear to be similar, are in fact in different octaves. The change of even one Swara can make a difference in the musical composition. Further, the taal is also not alleged to be the same for both compositions. The Defendants have not placed anything on record to show as to which genre the said composition belongs to and which Raga is Amir Khusro’s composition is based on.”

The learned Single Judge, thereafter comparing the notation of Amir Khusro’s composition with the Suit Composition and melodic structure of *Raga Adana*, observed that although the Suit Composition is based on *Raga Adana*, however, the manner in which the *swaras* are picked, the combination of *swaras* with different *swaras* in *Aroha* and *Avroha*, the repetition of some *swaras*, the *Aalaap*, the dragging of some *swaras*, the transition and the merger are all unique to Suit Composition that differs from the prescribed notations for *Raga Adana*. Thus, it was concluded by the learned Single Judge that the



prescription of *Raga Adana* would itself may be in public domain, however the specific composition relating to “*Shiva Stuti*” is an original composition of the plaintiff. Further, the learned Single Judge also went on to hold that the Suit Composition is original **as it is composed in a specific taal-sultaal (10 beats) instead of the chautaal (12 beats) common for compositions in Raga Adana.** The learned Single Judge also laid emphasis on the *swaras* “G M R S” and held that although the said *swaras* is common for all *Raga Adana* and *Kanada Ragas*, however **the Suit Composition differs from the common Raga Adana due to the dragging of the Swara “g” in the Suit Composition.**

38. On the issue of whether the Junior Dagar Brothers are authors of Suit Composition, the learned Single Judges relied on the inlay card of the CDs along with cover photograph of the CD of the album “Shiva Mahadeva” and observed in the following words;

“152. The above documents clearly shows, at least at the prima facie stage, that there is independent evidence of the suit composition having been composed and rendered by the Junior Dagar Brothers and thereafter the same being published. In the said CD, the suit composition is under the title “Dhrupad in Sultala” and the accompanying printed inlay card sets out this composition”

39. Further, the impugned judgment relies on the agreement dated 01.07.1995 between PAN Records and the plaintiff, representing the Junior Dagar Brothers which permitted PAN Records to manufacture and sell recordings consisting of performances of the Junior Dagar Brothers at the Royal Tropical Institute, Amsterdam on 22.06.1978 and agreement with M/s Navras Records Ltd., U.K. dated 27.03.2007,



2025:DHC:8522-DB



by which the publishing and mechanical rights of the Suit Composition was granted. The impugned judgment relies on these documents and points out that there is no contrary material evidence brought on record by the Defendants and thus held that the Junior Dagar Brothers are the authors of the Suit Composition and decided the application under Order XXXIX Rule 1 & 2 of the CPC in favour of plaintiff.

40. Having so held, the learned Single Judge after establishing the plaintiff as the author went on to consider the author's special rights under Section 57, and cited precedents such as *Sulamangalam R. Jayalakshmi v. Meta Musicals*⁷, underlining that failure to credit original composers in derivative works can constitute a violation of moral rights.

41. The learned Single Judge was expressly mindful of excluding from the scope of protection those elements that are dictated by tradition and are *scenes à faire*, such as the prescribed *aroha/avroha* patterns and characteristic phrases of a *raga*. Relying on the Bombay High Court's decision in *Ram Sampath v. Rajesh Roshan*⁸, the learned Single Judge observed that the test is whether the "soul" or essential identity of the earlier work has been taken, and that even the reproduction of a small but central core segment may constitute infringement.

⁷ 2000 SCC OnLine Mad 381

⁸ 2008 SCC Online Bom 370



2025:DHC:8522-DB



42. The learned Single Judge also made reference to the “lay listener test”, highlighting that, particularly in light of the traditional oral history of Indian classical music, what counts is not a technical note-by-note analysis but rather the entire oral impression. The learned Single Judge determined that the impugned song is similar to the Suit Composition and *prima facie* establishes that the impugned song is substantially similar to the plaintiff’s Suit Composition.

43. Applying these principles, the learned Single Judge concluded that “*Shiva Stuti*”, as allegedly composed and popularized by the Junior Dagar Brothers and evidenced by the 1978 Amsterdam recording, was an original musical work displaying creative choices in note arrangement, rhythm cycle, and emotional expression that separated from the mere reiteration of public domain elements. It was further observed that the core of the impugned song “*Veera Raja Veera*” is not just inspired but is in fact identical in Swaras (notes), *Bhava* (Emotion) and Aural impact (impact on the ear) of the “*Shiva Stuti*”, from the point of view of a lay listener. The learned Single Judge concluded that the structural, melodic, and aural similarities between “*Shiva Stuti*” and “*Veera Raja Veera*” went beyond what could be explained by common adherence to the idiom of *Raag Adana*’s alone, and that Defendant No.1 had access and opportunity to reproduce these elements, especially since two of the plaintiffs’ disciples, i.e., Defendants No. 5 and 6, were involved in recording the impugned song.



44. On the question of relief, the learned Single Judge acknowledged the film's prior release but stressed the importance of moral rights, citing *Suresh Jindal v. Rizoli Corriere Della Sera Prodzioni T.V. Spa*⁹ and other cases, where recognition and credit were deemed “adequate remedy” which cannot be compensated with monetary damages alone, as reputational gain is at stake. The balance of convenience was found to be in favour of the plaintiff, holding that restraining the song outright would disrupt an acclaimed production and cause irreparable loss to the defendants and third parties. Instead, the learned Single Judge crafted an interim solution prioritizing moral rights and recognition, thereby directing that:

“(i) all public credits for “Veera Raja Veera” be updated to identify the Junior Dagar Brothers as the composers of the source material;

(ii) Defendant Nos. 1 to 3 were directed to deposit Rs 2 crore with the Court as security pending trial; and

(iii) costs of Rs 2 lakh be paid to the plaintiff by Defendants 1 to 3. The Judge emphasized the temporary nature of the findings, subject to further evidence and trial.”

PROCEEDINGS BEFORE THIS COURT

45. The instant appeal was listed for the first time before this Court on 06.05.2025, wherein notice was issued and the matter was listed for disposal, both parties were directed to provide written submissions along with properly indexed compilations of any judicial authority they wished to rely on. In the meantime, this Court directed the appellant to deposit a sum of Rs 2,00,00,000 (Rupees Two crores only), in view of the law relating to the grant of stay in money decree

⁹ 1991 Supp (2) SCC 3



2025:DHC:8522-DB



and subject to the said direction granted stay on the injunction given by learned Single Judge.

46. Thereafter, arguments of Mr. Saikrishna Rajagopal, learned Counsel for the Defendant no.1 was heard at length on 22.07.2025 and arguments of Mr. Neel Mason, learned Counsel for plaintiff were heard at length with respect to authorship on 29.07.2025. Thereafter, matter was reserved after hearing both the sides.

SUBMISSIONS

APPELLANT/ DEFENDANT NO.1's CONTENTIONS

47. Learned Counsel for Defendant No.1 challenged the impugned judgment dated 25.04.2025 passed in I.A. No. 21148 of 2023, with regard to the credit attribution, monetary deposit of Rs 2 crores, and costs, that the aforesaid amounted to final relief at the interlocutory stage, to the plaintiff, and alleged that relief granted are contrary to settled principles for the grant of interim injunction.

48. It was submitted that the evidence of stage performance has been conflated with evidence of authorship of the musical work i.e., the Suit Composition. All evidence filed by the plaintiff and relied upon in the impugned judgment relates to mere stage performances and not of composing/authoring the musical work.

49. On the question of ownership, it was submitted that a singer's performance, however eminent, is legally distinct from authorship of



the underlying composition. Particularly in the context of classical music, the rendition of a work does not create ownership rights in the composition itself. According to the learned Counsel, the only “evidence” relied upon by the plaintiff is the performance history of the Junior Dagar Brothers and there is no other record attributing authorship to them.

50. Further it was submitted that Section 2(d) read with Sections 2(ffa), 2(p), and 17 of the Act, define the ‘composer’ as the person who creates the melodic sounds. It was vehemently argued by Mr. Saikrishna Rajagopal that there is no evidence to show that the specific combination of *swaras* (notes) over which copyright is claimed was, in fact, created by the Junior Dagar Brothers. According to him, a bare pleading of the plaint and replication claiming authorship would not be sufficient proof of authorship.

51. Learned Counsel for the defendant submitted that the burden of proving authorship of the Suit Composition squarely rests upon the plaintiff. While the plaintiff has affirmatively asserted that the Junior Dagar Brothers composed and created the melody and combination of *swaras* comprising the musical work underlying the Suit Composition, there is neither cogent evidence nor any material on record which, even *prima facie*, establishes that the plaintiff is the author of the Suit Composition. The learned Counsel further submitted that the impugned judgment erroneously reverses the burden of proof onto the defendants, contrary to settled legal principles which require the plaintiff to firstly establish his claim, i.e., authorship and consequent



ownership in the present case. Further, it was contended that plaintiff cannot rely upon the alleged ‘weakness or absence of defence’ evidence to establish its case. In particular, reliance was placed on the reasoning in the impugned judgment that “*no documents contrary to the claim of the appellant which would show that the Jr. Dagar Bros. are not the authors’ of Suit Composition, and thus, prima facie, the Plaintiff has been established that the Jr. Dagar Bros. are the authors’ of Suit Composition*”, is a clear misplacement of the burden of proof, and is entirely contrary with Section 55(2) of the Act. In any case, it was submitted that the plaintiff ought to stand on his own legs to prove its authorship of the Suit Composition before the suit could proceed further.

52. The learned Counsel for the appellant submitted that Section 55(2) of the Act is an enabling provision, allowing the Court to presume ownership where the author’s name appears on the work itself, thereby shifting the burden of proof to the other side and in this particular matter there is no such evidence neither the diary extract nor the recordings display, to indicate the Junior Dagar Brothers as the authors of the Suit Composition. The burden has therefore not shifted and the respondent’s case rests entirely on performances, which by themselves are insufficient to establish authorship.

53. The learned Counsel pointed out that even the agreement with M/S Navras Records agreement relied upon by the plaintiff, does not deal specifically with “*Shiva Stuti*”, but is rather a compilation of multiple works, of which *Raaga Adana* is only one component, which



2025:DHC:8522-DB



according to the learned Counsel cannot serve as proof of ownership of the Suit Composition in isolation.

54. On the issue of originality and infringement, the learned Counsel clarified that his case is not that “*Shiva Stuti*” as a composition is per se unprotectable, but that the individual sequences of notes relied upon by the plaintiff do not originate from the Junior Dagar Brothers but from the grammar of *Raaga Adana* which forms part of the public domain, and are incapable of exclusive appropriation. While a unique selection and arrangement of such notes could attract protection, it was submitted that such was never the pleaded case of the plaintiff.

55. The learned Counsel further argued on the issue of originality, it was submitted that Indian Classical Music operates within a rigid framework of rules comprising structural progressions of interrelated swaras / notes / sounds dictated by each Raaga’s prescriptions to evoke an associated rasa or emotion. Interrelatedness of swaras / notes / sound frequencies in Raaga music is a prescribed framework of specific combination of swaras / notes and melodic patterns that form the Raaga’s *Aroha*, *Avroha*, *Pakad*, *Aalaapa*, *Alankaars*, *Taanas*, *Chalan*. The relationship between the swaras in their progressions and the framework of rules to be followed are not original or unique or independent creative choices or selections and arrangements, but mandatory prescriptions for a composition to stay within, and be identified as falling within the bounds of a Raaga. According to Mr. Saikrishna Rajagopal, such combinations and progressions of notes /



swaras are well-known selections and arrangements which are commonplace in Indian Classical music and this necessity to follow the framework prescribed for a particular Raaga, is imperative, so that the composition is familiar and recognizable within the Raaga. Thus, it has been argued that any composition, in order to be identified as, and to be able to claim that, it is composed in a particular Raaga, must incorporate swara combinations and progressions as per the framework of rules mandated by that Raaga. These combinations, progressions, and the framework of rules and prescriptions of the Raaga are admittedly in public domain and cannot be the subject matter of protection, falling within the ambit of *scenes à faire* i.e. common to the genre of Indian classical music.

56. The learned Counsel has strenuously submitted that it is necessary to filter out unprotectable elements prescribed by the framework of a Raaga's rules and in that regard relied on the judgment of the ***Ram Sampath*** (supra) and submitted that the said judgment mandates this filtration exercise. He submitted that as musical compositions based on Indian classical music will have both protectable and non-protectable elements, the non-protectable elements which cannot be departed from due to the framework of rules prescribed by the Raaga must be excluded and the scope of protection ought to be limited only to protectable elements.

57. It has also been further submitted that although the impugned judgment recognized the note progressions in Lines A, D and H (which are identical) - "Re-Sa-Ni-Sa-Ni-Pa" to be the "hook" of the



Suit Composition, however, the Plaint nowhere identified this as the “hook/soul” or the “main part” of the Suit Composition. Thus, it was submitted that this note progression is not original to the plaintiff and is a prescribed standard *Aalap*, common place to the framework of rules prescribed in the melodic structure of *Raaga Adana* and other Raagas of the same *Thaat* (family of Raagas), such as *Darbari Kanada*, which is one of the many Raagas that “*Veera Raja Veera*” (Impugned Song) is based on. It was also pointed out that the said note progression prominently appears in compositions of Amir Khusro dating back to the 13th century [“*Yaar-e-man-biya*”] which proves that the note progression relied upon in the impugned judgment is available in public domain.

58. It has also been submitted by the learned Counsel for the Defendant No.1 that, the plaintiff has failed, even *prima facie* to demonstrate how their selection and arrangement of lines is original, and beyond the Raag’s mandated structures. In particular, the opening lyrics of “*Shiva Stuti*” is mandated by the rules of prescription of the *Avroha* and *Pakad* of *Raag Adana*. Thus, such selection and arrangement of such group of notes cannot transition from mere adherence to *Raag* prescriptions into an original composition requiring the exercise of independent skill, judgment, and creativity, as envisaged in *Eastern Book Company (supra)*.

59. The Defendant No.1’s arguments in a nutshell are that they filed the present appeal who are seeking a reversal of the impugned judgment, questioning both factual and legal findings at the interim



stage. The submissions summarised by the learned Counsel is that, if the judgment is allowed to remain, it would "sound a death knell on the music industry in India". The main grounds being:

- “(a) absence of reliable proof of authorship and originality;
- (b) failure to “filter out” unprotectable Raaga-mandated elements before comparison;
- (c) misapplication of the “lay listener” test instead of expert or “virtual identity” standards for works within classical frameworks;
- (d) conflation of inspiration from a style or tradition with copying a specific composition; and
- (e) erroneous grant of final relief at the interim stage.”

It was also argued that there was a substantial delay of nearly six months in the plaintiff seeking and obtaining the interim relief after the film's release, which undermines the premise of urgency required for such injunctions.

RESPONDENT /PLAINTIFF’S CONTENTION

60. Per contra, the learned Counsel for the respondent, Mr. Neel Mason, supporting the impugned judgment of the learned Single Judge, submitted that the Junior Dagar Brothers were the original authors and composers of the “*Shiva Stuti*” and that the Respondent’s composition “*Veera Raja Veera*” reproduces the essential elements of this suit composition without attribution, thereby infringing both economic and moral rights.

61. The learned Counsel submits that the impugned judgment has met the requirements needed for adjudication of an interlocutory



application, further, the respondent has made out a *prima facie* case and that the balance of convenience lies in their favour. According to him, irreparable loss and injury would be caused to the creative and moral rights of the Junior Dagar Brothers as well as the plaintiff, in case the impugned order is unsettled in any manner.

62. It was further contended that “*Shiva Stuti*” was jointly authored by the late Junior Dagar Brothers in the 1970s and their composer status arises as per Sections 2(d), 2(ffa), and 17 of the Act, which defines the composer as the author and first owner of a musical work.

63. It was also submitted that once a composition is created, it exists as a work capable of protection, and any performer wishing to perform it must obtain consent or a licence from the copyright owner and in any case, the right to perform, license, or authorise others to perform is an incident of ownership.

64. It is submitted by Mr. Neel Mason that their case rests on a body of “circumstantial evidence” demonstrating authorship, in the following manner:

- “i. Lyrics of “*Shiva Stuti*” is in the handwriting of the Junior Dagar Brothers;
- ii. Earliest known performance by the Junior Dagar Brothers recorded on 22 June 1978 at the International Festival in Amsterdam, later released as “Shiva Mahadeva Dagar Brothers 1966” in tribute after their passing;
- iii. Navras Records licensing arrangements, under which permission for the use of certain works, including Raaga Adana, was granted by the Junior Dagar Brothers



and their family, said to be possible only because they owned the rights; and

iv. Absence of competing claims by any third party as no one has asserted that the identical composition was performed by anyone else prior to the 1970s.”

65. The learned Counsel defending the findings of the learned Single Judge, further submitted that the agreement with M/s Navras Records Ltd., U.K. dated 27.03.2007 by which the publishing and mechanical rights of the Suit Composition were granted, is itself indicative of ownership. It was argued that such licensing to a third party could only have been undertaken by the Junior Dagar Brothers if they possessed rights in the underlying composition. The very act of granting such rights, therefore, constitutes recognition of their authorship and control over the Suit Composition.

66. It was submitted that there is neither any allegation nor any document on record casting doubt against the 1978 Amsterdam performance, nor is there any competing version of “*Shiva Stuti*” predating the rendition of the Junior Dagar Brothers. This absence of prior publication or alternative claims, according to learned Counsel, further fortifies the respondent’s assertion of originality.

67. Learned Counsel further has heavily relied upon the alleged admissions of Defendant No.1, that he has been inspired by the works of the Juinor Dagar Brothers, which coupled with the fact that Defendant No(s). 5 and 6 as disciples in the *guru-shishya tradition*, had direct access to the plaintiff’s repertoire, establishes clear



evidence of access of the plaintiff's work by the Defendant No.1 to the Suit Composition.

68. Relying on Sections 19 and 30 of the Act, the learned Counsel submitted that assignments of rights to anyone must be in writing, and the plaintiff's family has never assigned the rights in "Shiva Stuti" to the Defendant No.1 or anyone else. Thus, reference was made to Sections 2(d) (definition of "author"), 2(ff) (definition of "performance"), and 17 (first ownership) to argue that authorship and ownership in the Suit Composition vest exclusively with the Junior Dagar Brothers.

69. It was further submitted that under Section 3 of the Act, "publication" means the communication of a work to the public, and notation is not mandatory. In the 1970s, performance was the primary mode of such communication; the Junior Dagar Brothers repeated public performances therefore constitute proof of publication and ownership in the absence of formal registration.

70. Learned Counsel also emphasised that the plaintiff's moral rights under Section 57 of the Act need to be protected as any continued uncredited use of "Shiva Stuti" diminishes the legacy of the Dagarvani tradition. It was also submitted that the commercial timeline of online music means that the economic value of a song diminishes rapidly over time, making timely attribution essential.



2025:DHC:8522-DB



71. It was in the aforesaid background, that the learned Counsel submitted that no interference was required in the Impugned judgment of the learned Single Judge as the same was based on sound principles of law and moreover, under Sections 14 and 51 of the Act to contend that the owner of a copyright has the exclusive right to do, or authorise the doing of, any act comprised in the copyright, and the unauthorised doing of such acts amounts to infringement. Further, the provisions of Section 14 and Section 51 were demonstrated to submit that as per Section 14 it extends to the whole work or any substantial part thereof and Section 51 confers upon the owner the right to enforce these exclusive rights.

ANALYSIS AND FINDINGS

72. The present case is not an ordinarily couched litigation relating to infringement of copyright in musical works. In ancient India, creative persons like musicians and writers composed and authored for name and fame and were widely accepted as a work of recognition rather than to commercialise the same and as such there was no concept of copyright. However, with the advent of science and most importantly the printing press and the technology enabling reproduction of music or books in large quantity, the dispute relating to copyright became inevitable. Indian classical music can be traced to time immemorial and its basic foundation lies in oral transmission and its creative reinterpretation. The *guru-shishya parampara* is best to be found in learning of Indian classical music, wherein shishya imitate their gurus and the composition is evolved and passed through various ages and generations. In this system, neither any Guru – Shishya nor



any single artist can claim absolute ownership over a particular composition or a raga or a musical motif. However, the said ancient concept is fundamentally odd with the prevailing law, which assumes a clearly identifiable creator and a fixed form of expression for copyright protection. Thus, the facts and circumstances of the present case, brings into fore the intricate task of applying modern copyright principles rooted in individualisation to traditional heritage art forms that have evolved collectively over centuries, for which the privilege of copyright protection, may not be available.

73. Before going into merits of the case, this Court at the outset notices, that issues which arise in this appeal have implication not only to the individual parties involved but the entire Hindustani classical music industry of this country, which has evolved collectively over the years, from pre-historic times. Therefore, this Court endeavours to address the issue only limited to this case and restricts itself to the core two issues of the matter that is:

- “i. whether the Suit Composition is authored/composed by the Respondent No.1/plaintiff”.
- ii. whether the Suit Composition is original composition of Respondent No.1/plaintiff.”

74. Before dwelling into specifics of the matter we consider that the law pertaining to copyright should be discussed with respect to Indian classical music.



75. Copyright is a right to stop others from exploiting the work without the consent or assents of the owner of the copyright¹⁰. The Hon'ble Supreme Court has characterised copyrights the “exclusive right”, subject to the provisions of the Act, to do or authorise the doing of certain acts “in respect of a work”¹¹. The copyright act does not require **compulsory registration** of the work for availing the benefits and protection available to the owners. Under Section 45 of the Act, the registration of copyright has been made optional. A perusal of Section 45 would show that the usage of word “**may**” in the Section with respect to registration, is very significant. The said Section inter-alia states:

“45. Entries in Register of Copyrights. — (1) The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights for entering particulars of the work in the Register of Copyrights: 2[Provided that in respect of an artistic work which is used or is capable of being used in 3[relation to any goods or services], the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in 4[Section 3 of the Trade Marks Act, 1999 (47 of 1999)], to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.]

(2) On receipt of an application in respect of any work under sub-Section (1), the Registrar of Copyrights may, after holding such inquiry as he may deem fit, enter the particulars of the work in the Register of Copyrights.”

76. The usage of word “may” being used for registration of the copyright shows that the copyright act does not require **compulsory**

¹⁰Eastern book company v. D.B. Modak, (2008) 1 SCC 1, Para 8

¹¹ Engineering Analysis Centre of Excellence Private Limited vs The commissioner of Income Tax Anr. Civil Appeal Nos 8733-8734 of 2018, Para 35



registration of the work for availing the benefits and protection. The registration of copyright has been made optional and can be denoted from the usage of “**may**” in Section 45 while referring to registration. Further, the provisions of Section 51 of the Act refer to infringement not being barred by unregistered copyright. The said interpretation of this Section was made by the learned Single Judge of the Bombay High Court in *Sanjay Soya Private Limited Vs. Narayani Trading Company*¹².

77. Further, by virtue of Section 17, the author is the first owner of the copyright, if a work is an original work of the composer, the same would be entitled to protection under Section 13(1) of the Act. Thus, law is very much settled to the extent that if there is clear authorship and the work is original of the author, the rights under Act are enforceable. The definition of Section 13 and 17 of the copyright is reproduced below:

“13. Works in which copyright subsists. — (1) Subject to the provisions of this Section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

- (a) original literary, dramatic, musical and artistic works;*
- (b) cinematograph films; and*
- (c) [sound recording].*

17. First owner of copyright. — Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical*

¹² 2021 SCC OnLineBom 407



under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

1[(cc) in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or

speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;]

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

2[(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.



78. A conjoint reading of the above provisions, makes it abundantly clear that the author is the first owner and copyright subsists in the musical work. For a musical work, the author is the composer of that melody or composition. The author is basically the creator of the song. Section 2 (d) of the Act defines the term “author”, in the following words:

“author” means, —

(i) in relation to a literary or dramatic work, the author of the work;

*(ii) in relation to a **musical work, the composer.***

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

2[(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person

who causes the work to be created;] “author” means, —

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer;

(iii) in relation to an artistic work other than a photograph, the artist;

(iv) in relation to a photograph, the person taking the photograph;

2[(v) in relation to a cinematograph film or sound recording, the producer; and

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person”



79. Now coming to the rights of performer, the Act defines a “performer” separately under Section 2 (qq) to include singers, musicians, actors, etc., and grants them special “performer’s rights” that are independent of the underlying work’s copyright.

“Section 2(qq) says “performer” includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;]”

80. The simple reading of the above terms shows us that a performer can include musician or any other person who makes a “performance”. Performer does not become the author or owner of copyright in a song merely by performing it, their rights are related but distinct as mentioned in the Sections produced and discussed above. Thus, a distinction has been drawn between a performer and an author in the Act itself.

81. With regards to authorship, we can say that concept of authorship is the core part to copyright law because the initial and enforceable rights over a creative work is granted to the author only. Copyright arises once work of author is **original** under Section 13(1) of the Act. However, unlike patents or trademarks, copyright does not compulsorily require registration of the copyright as its existence is stemmed directly to the act of creation and by virtue of Section 45 as discussed above.

82. In practical enforcement of copyright especially in genres like Indian classical music where works are transmitted orally, proving



2025:DHC:8522-DB



authorship can be a difficult job. The Suit Composition “*Shiva Stuti*” is a perfect example of these challenges, as its authorship is tied to its first performance and oral tradition rather than formal written composition. This is critical in Indian classical music, where compositions are orally transmitted, rather than through formal notation, registration etc.

83. Indian culture has an enduring tradition of transmitting religious texts and music through oral means, a practice that dates back to the earliest scriptures and has a long-standing history of passing down religious writings’ texts and music. One such illustration is found from the text of **Bhagavad Gita, in Chapter 4**, which reads as “*This supreme science was thus received through the chain of disciplic succession, and the saintly kings understood it in that way.*”¹³ Reading the exchanges above demonstrates and highlights the century old custom of a guru teaching his disciples. Thus, the verse highlights the sanctity of the *guru-shishya parampara*, as the most authentic and enduring medium of transmitting knowledge.

84. Now coming to the topic of performance and authorship, it is well-settled under Indian copyright law that the author of a musical work is the creator of the composition itself, whereas a performer merely interprets such work. However, in circumstances where the **earliest available fixation of a composition is through a performance** as in the case of the Junior Dagar Brothers’ 1978

¹³Bhagavad Gītā, Chapter 4, 4.2:
“एवं परम्पराप्राप्तमिमं राजर्षयो विदुः।
स कालेनेह महता योगो नष्टः परन्तप ॥ 2॥



rendition of “*Shiva Stuti*” the distinction between performance and authorship becomes less clearly demarcated. It is in this context that the question of authorship of “*Shiva Stuti*” warrants closer scrutiny.

85. It is a settled law that copyright is only enforceable for original works of authorship and there must be an identifiable author who contributed some creative originality beyond what is already in the public domain as held by in *Eastern Book Company (supra)* The Hon’ble Supreme Court in this particular case cleared the law with respect to the originality aspect. The relevant portion is reproduced below:

“57. The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, coordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. On the face of the provisions of the Copyright Act, 1957, we think that the principle laid down by the Canadian Court would be applicable in copyright of the judgments of the Apex Court. We make it clear that the decision of ours would be confined to the judgments of the Courts which are in the public domain as by virtue of Section 52 of the Act there is no copyright in the original text of the judgments. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the Court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author”

The Hon’ble Court further held at paragraph 59; inter-alia:

“59. The aforesaid inputs put by the appellants in the judgments would have had a copyright had we accepted the principle that



anyone who by his or her own skill and labour creates an original work of whatever character, shall enjoy an exclusive right to copy that work and no one else would be permitted to reap the crop what the copyright owner had sown. No doubt the appellants have collected the material and improved the readability of the judgment by putting inputs in the original text of the judgment by considerable labour and arranged it in their own style, but that does not give the flavour of minimum requirement of creativity. The exercise of the skill and judgment required to produce the work is trivial and is on account of the labour and the capital invested and could be characterised as purely a work which has been brought about by putting some amount of labour by the appellants”.

86. Therefore, the difficulty arises where a composition has existed for several decades and the identity of its actual composer remains uncertain. In such circumstances, recognition and enforcement of copyright becomes problematic, as the work lacks an identifiable original author upon whom ownership may legally vest.

87. Adverting to the present facts, it is not disputed that the first fixation of the Suit Composition was done in 1978 Amsterdam concert and it is also not disputed that the rights were only given with respect to performance and there was no mention as to Junior Dagar Brothers being the original suit composers. Thus, the question arises that as to whether the Junior Dagar Brothers being the first performers for Suit Composition can claim right as authors.

88. As to the rights of performers, it would be pertinent to mention that performers were first given explicit rights in Indian law via a **1994 amendment**¹⁴, bringing India in line with international standards. **Section 38** of the Act creates a “performer’s special

¹⁴ Copyright (Amendment) Act, No.38 of , 1994



right” in any performance, which **“is independent of any copyright in the underlying work”**. This means that even though a singer’s performance of a song is protected, that protection does not transfer authorship of the song. It only gives the performer control over recordings or broadcasts of their performance. The performer’s right lasts 50 years and allows the artist to prevent unauthorized recording, reproduction, or communication of that performance. Notably, the **2012 amendments**¹⁵ expanded these rights by adding Section 38A and added moral rights for performers under Section 38B, such as the right to be identified and to object to derogatory modifications of the performance. However, these too are limited to the performance itself, and are silent on the cases where the performances are likely the first fixation of the work. Therefore, it is clear that mere performing a work do not make the performer an “author” of the underlying musical composition in any circumstance. The Section regarding the rights of performers is reproduced below.

“38. Performer’s right. — (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the “performer’s right” in relation to such performance.

(2) The performer’s right shall subsist until 3[fifty years] from the beginning of the calendar year next following the year in which the performance is made.”

“38A. Exclusive right of performers. — (1) Without prejudice to the rights conferred on authors, the performer’s right which is an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely: —

(a) to make a sound recording or a visual recording of the performance, including—

¹⁵Copyright (Amendment) Act, No.27 of 2012



(i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;

(ii) issuance of copies of it to the public not being copies already in circulation;

(iii) communication of it to the public;

(iv) selling or giving it on commercial rental or offer for sale or for commercial rental any copy

of the recording;

(b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

(2) Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film:

Provided that, notwithstanding anything contained in this sub-Section, the performer shall be entitled for royalties in case of making of the performances for commercial use.]

38B. Moral rights of the performer. — The performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right, —

(a) to claim to be identified as the performer of his performance except where omission is

dictated by the manner of the use of the performance; and

(b) to restrain or claim damage in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.”

89. Thus, it is clear that the performers are distinct to authors and if the Defendant No.1, succeeds in establishing that the Dagar Brothers are only first performers, then the Plaintiff cannot claim copyright as authors, therefore, it is important to adjudicate as to whether Dagar Brothers are mere performers or the author of the Suit Composition.



2025:DHC:8522-DB

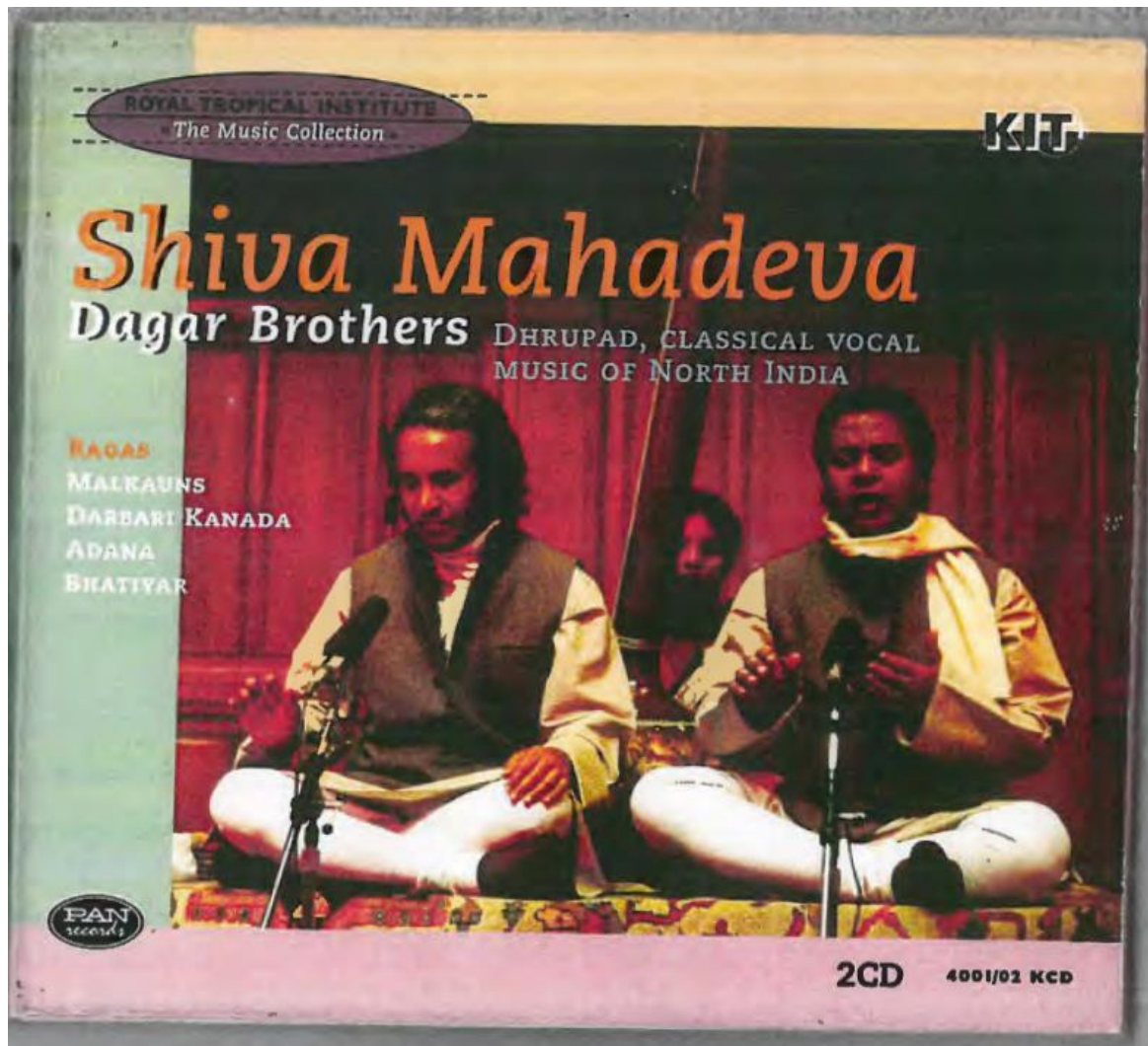


90. The impugned judgment declares the plaintiff as the *prima facie* authors of the Suit Composition. The impugned judgment relies on various documents including earlier published CDs, agreements, etc. and continues to show that Suit Composition, which is based on *Raga Adana*, is the original work of the Junior Dagar Brothers and subsequently they are the authors. Thus, it would be beneficial to discuss the documents placed on record for adjudicating authorship.

91. As the impugned judgment noted, cover photograph of the CD of the album “*Shiva Mahadeva*” from the Royal Tropical Institute along with copy of the accompanying inlay card have been placed on record by the Plaintiff before the learned Single Judge. The photos of the said music album are reproduced below:

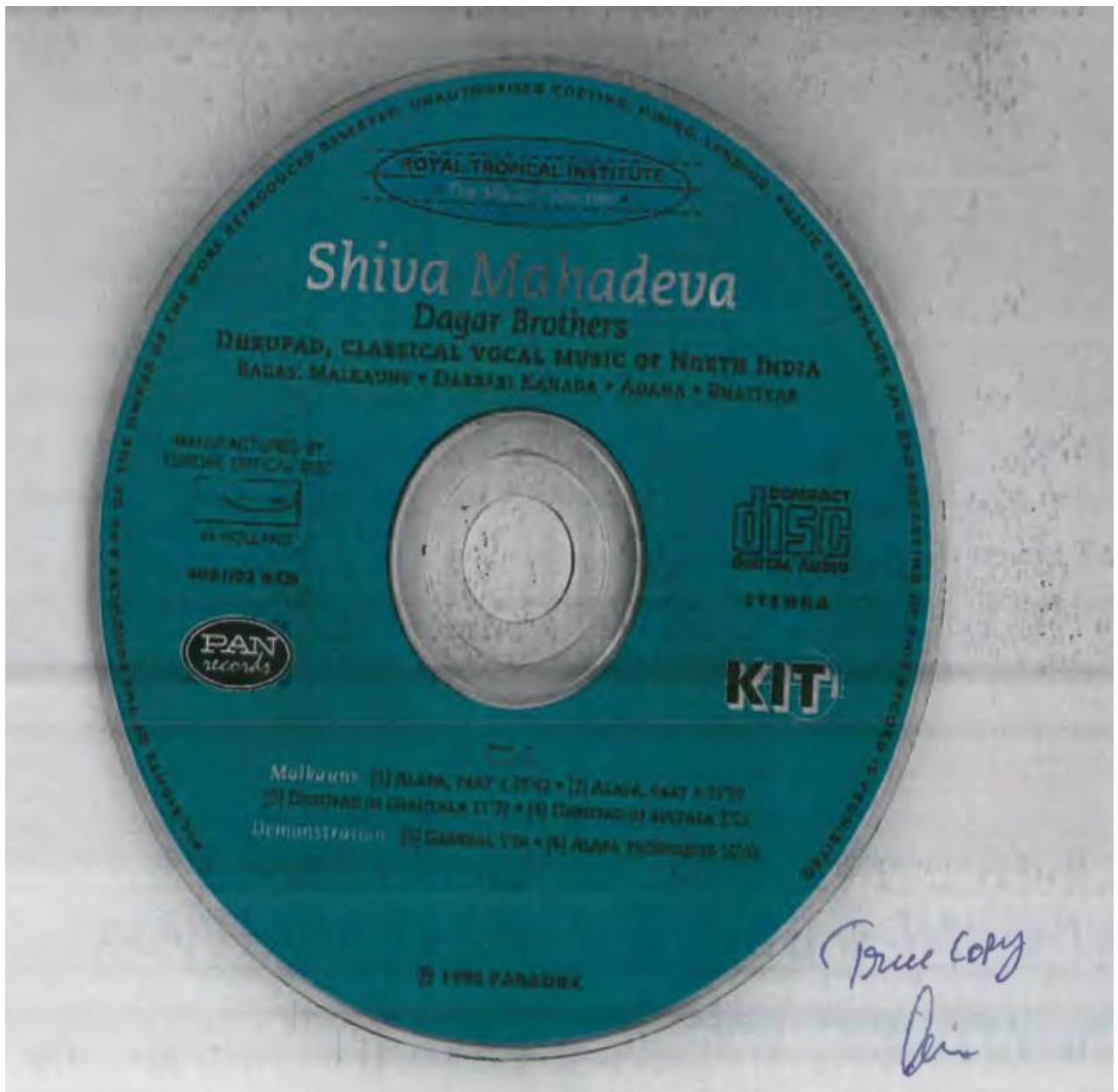


2025:DHC:8522-DB





2025:DHC:8522-DB





2025:DHC:8522-DB



ROYAL TROPICAL INSTITUTE
The Music Collection

Music is changing rapidly all over the world. New styles and genres develop, others have nearly disappeared. With the CD series **«The Music Collection»** the Royal Tropical Institute preserves as well as opens a unique collection of concerts, performances and field recordings.

The oldest original recordings in our archives consist of wax cylinder recordings made in Indonesia between 1923 and 1939. Most of the recordings were made by Jaap Kunst (1891-1960), founder and curator of the ethnomusicological department of the museum of the Royal Tropical Institute from 1936 till 1957. Jaap Kunst also started organizing live performances, mainly *gamelan* music of Indonesia. From the 1950s onwards more and more performances were organized, including artists from all over the world. In 1974 a special department was created for the organization of these events: the Soeterijn Theatre, a platform for non-Western cultures. Nowadays more than 200 performances a year take place in the Main Auditorium and in the Soeterijn Theatre. From 1970 onwards most of the concerts have been recorded, first on analogue tape and later on digital format.

Felix van Lamsweerde
Curator Ethnomusicology

≡
Huib Haringhuizen
Editor

The Royal Tropical Institute (KIT - Koninklijk Instituut voor de Tropen) is an international research and training organization that focuses on improving communications between the Western and non-Western world. Information and research results on rural development, health, culture and educational activities are disseminated through training, international debates, publications, information and documentation, library services, exhibitions, events and theatre performances.

≡
Royal Tropical Institute
P.O. Box 95001
1090 HA Amsterdam Netherlands
phone (+31-20) 5688380
fax (+31-20) 5688384

Recording engineer GERARD DE RUIG Sound engineer MARTIN RUIS
Musical director HANS QUANT Photography FELIX VAN LAMSWEERDE AND PHOTODEPARTMENT KIT Design STEPHAN DE SMIT
Digital mastering CYRILL VAN KAPPEL, AJW MEDIA BV Liner notes FELIX VAN LAMSWEERDE
Transcription and translation hindi texts DR. INDU SRIVASTAVA Producer REIN SPOORMAN Executive producer BERNARD KLEIKAMP

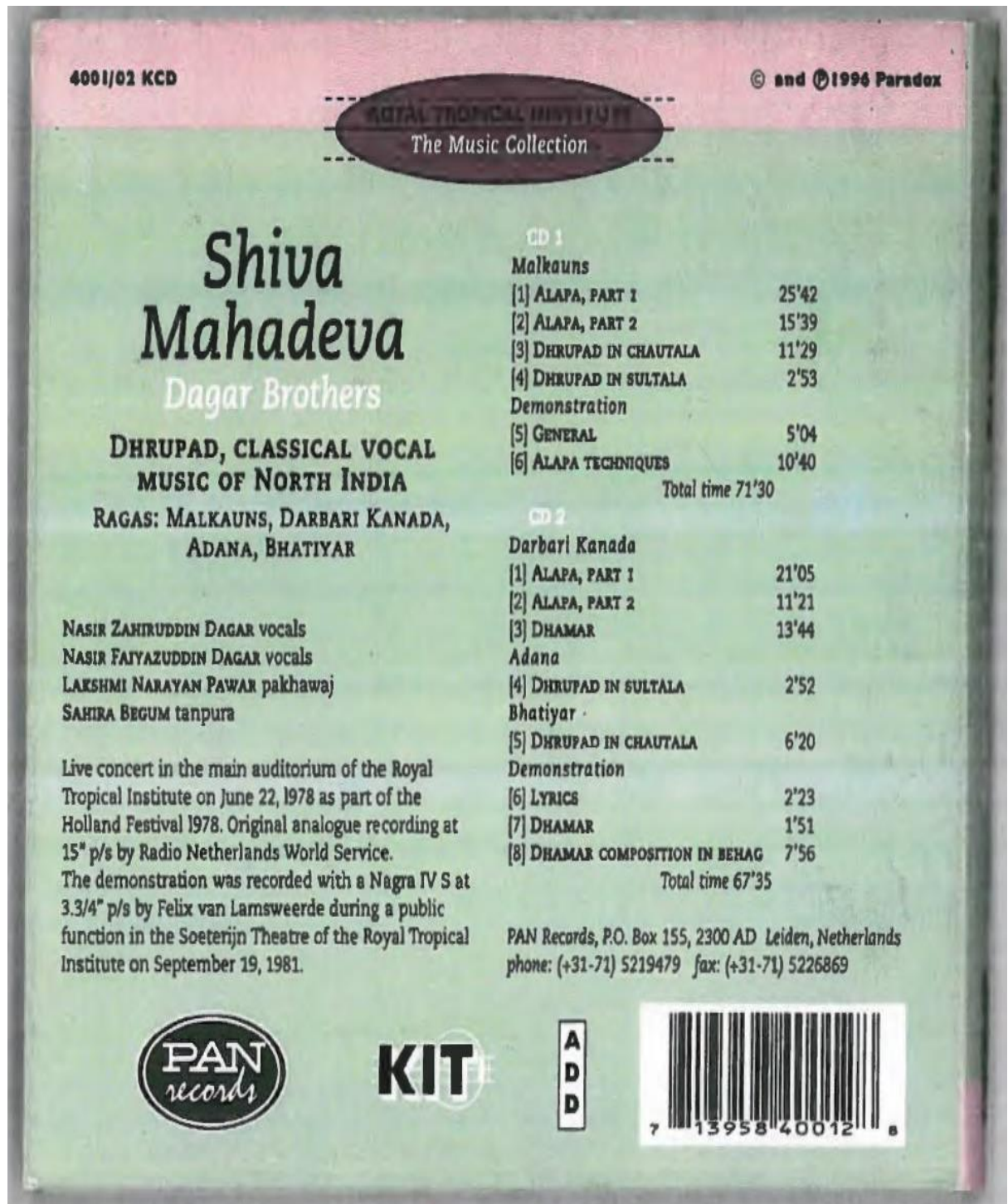
We are grateful to Henk Lansink of Radio Netherlands, Emmie te Nijenhuis, Wasifuddin Dagar (son of Faiyazuddin Dagar) and Laurence Bastit of the Dhrupad Society for their kind cooperation.

COVER PHOTOGRAPH The Dagar Brothers on stage in the Royal Tropical Institute, June 22, 1978.

To receive an extensive catalogue of Pan Records, please send two International Reply Coupons to PAN Records



2025:DHC:8522-DB



92. The impugned judgment on the perusal and in consideration of above document finds at the *prima facie* stage, that there is



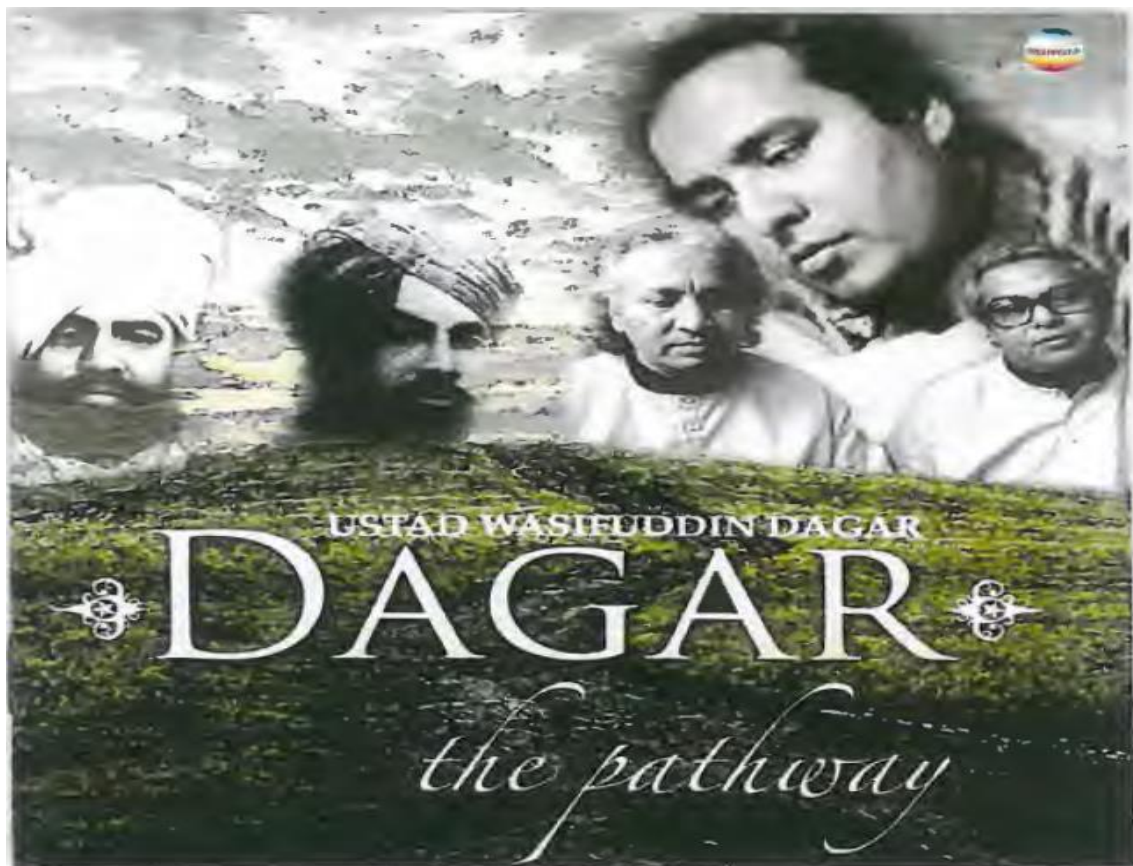
independent evidence of the Suit Composition having been composed and rendered by the Junior Dagar Brothers and thereafter the same being published. The other documents acknowledged by the impugned judgment are also reproduced below:

10

<p>Adana</p> <p>In medieaval texts the <i>raga adana</i> is associated with a heroic character of a warrior with a red complexion, entering the battlefield with a sword in his hand. This <i>raga</i> uses the same scale as <i>darbari Kanada</i>, but the use of the notes and the movement of the melody is different.</p> <p>[4] DHRUPAD IN SULTALA</p> <p>This composition is rendered in a lightning tempo, expressing the power of Lord Shiva. (For the structure of <i>sultala</i> see CD 1 #4).</p> <p>शिव शिव शिव शंकर आदिदेव शंभू भोलानाथ योगी महादेव । महाबली शिव आदि अंत शिव पूरन सकल काज हर हर महादेव ॥</p> <p><i>Shiva Shiva Shiva Shankara Adideva Shambhu Bholanatha Yogi Mahadeva. Mahabali Shiva adi anta, Shiva, purana sakala kaja hara hara Mahadeva.</i></p> <p><i>Sthayi:</i> Shiva, the Beneficent, the Auspicious One, the Primal Source, the Omnipresent, the Lord of the Innocents, the Ascetic and the Supreme God. <i>Antara:</i> Shiva the Powerful, the Root cause (of this universe), the End, the One who completes all incomplete jobs, glory to that Mahadeva (the Supreme God).</p>	<p>Bhatiyar</p> <p>This <i>raga</i> is traditionally performed long after midnight.</p> <p>In North Indian classical music there are several versions of <i>bhatiyar</i>, belonging to different basic scales. In this performance the scale used is, taking C as tonic: C-D flat-E-F-G-A-B, with occasional use of F# in ascent in a characteristic frase like G-F#-A-(D flat)-C. The D flat in the higher octave is used in a very dramatic way.</p> <p>[5] DHRUPAD IN CHAUTALA</p> <p>(For the structure of <i>chautala</i> see CD 1 #2).</p> <p>In maximum contrast with the former item this composition is rendered straight forward in a slow tempo like a prayer. It is a worthy conclusion of the concert, creating a feeling of devotion and peace.</p> <p>शिव शिव शिव शिव शंकर शंभू पशुपति गंगाधर उमापति रुद्रनारायण देव । नीलकंठ त्रयी ईश्वर कैलाशी काशी निवासी रूप बहुरूप त्रिशूलधारी देव ॥</p> <p><i>Shiva Shiva Shiva Shiva Shankara Shambhoo Pashupati Gangadhara Umapati Rudra Narayana Deva. Nilakantha trayi Ishwara Kailasha Kashi niwasi rupa bahurupa trishuladhari Deva.</i></p> <p><i>Sthayi:</i> Shiva, the Beneficent, the Auspicious One, the Omnipresent, the Lord of the Animals, the One who bears the Ganges in his locks, the</p>
---	---



2025:DHC:8522-DB



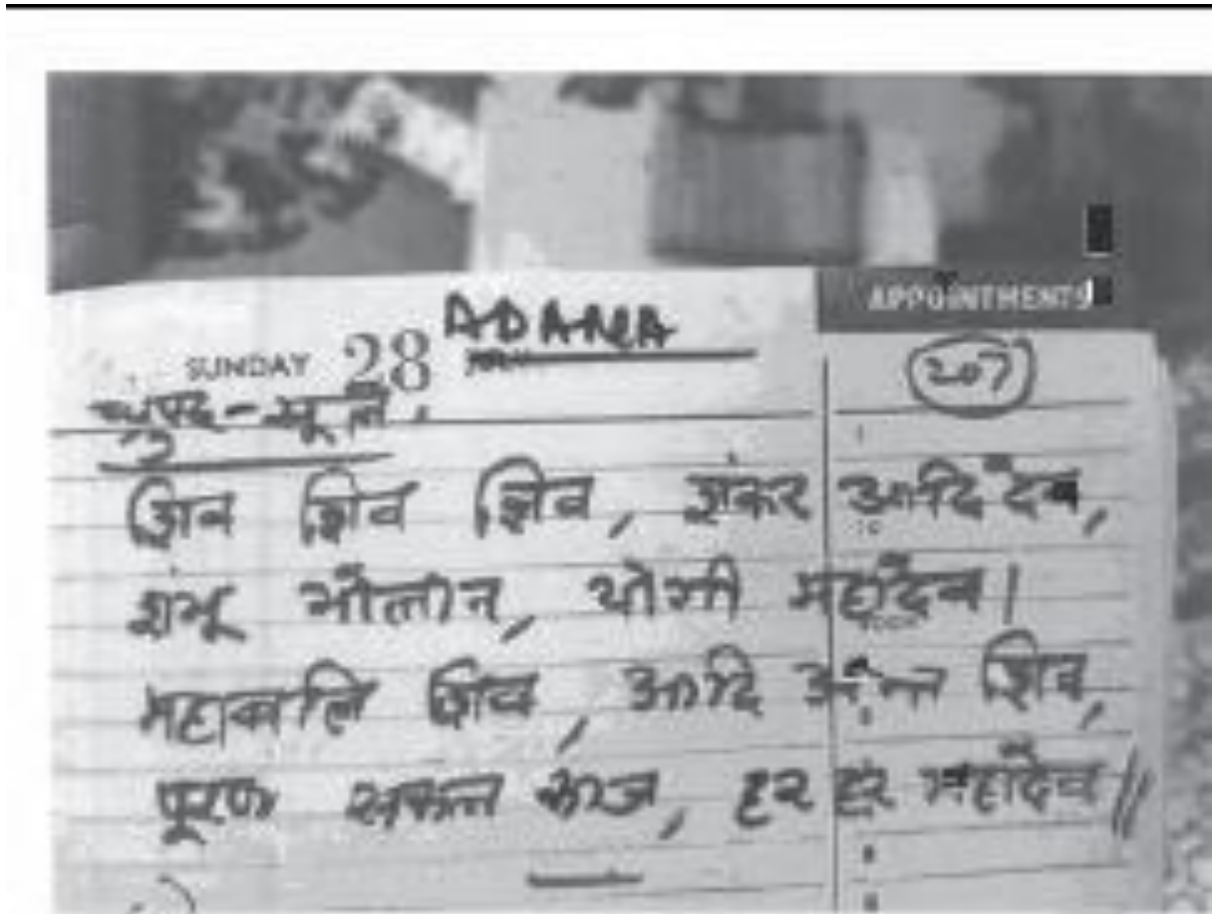
93. It is pertinent to note that the plaintiff/respondent placed reliance on an old diary before the learned Single Judge and alleged



2025:DHC:8522-DB



that the lyrics of the Suit Composition have been recorded. The image of the same diary has been reproduced below:



94. The impugned judgment relied on this diary noting along with the rendition of the “*Shiva Stuti*” on 22.06.1978 in an international concert in Amsterdam as part of the ‘Holland Festival 1978’. The rendition of the Suit Composition by the Junior Dagar Brothers was recorded by the Royal Tropical Institute, Amsterdam and the same was released by Pan Records as part of a musical album titled “*Shiva Mahadeva Dagar Brothers*”. The said album is stated to have been released sometime in the year 1996 as a tribute to the Junior Dagar Brothers after their death. The learned Single Judge relied on the



2025:DHC:8522-DB



photographs of the CDs of the said music album along with copy of the accompanying inlay card and went on to hold that at the *prima facie* stage, suit Composition has been composed and rendered by the Junior Dagar Brothers and thereafter the same having being published, Junior Dagar Brothers can be construed to be Authors.

95. Although, in the first blush the said proposition seems to be appealing and apt to the facts of the present case, however, after careful perusal and consideration of the same, we find it difficult to incur that the said photograph and the inlay card as independent evidence of authorship or attribution of authorship of Suit Composition by Junior Dagar Brothers. The document relied by the learned Single Judge **nowhere mention the Dagar Brothers as the composers** but the same has been presumed by learned Single Judge as there is no material to the contrary was filed by the Defendant No.1.

96. The learned Single Judge finds the rendition of the Suit Composition in 1978 in an international concert as the earliest available evidence, and then lays reliance on photograph of CDs of the said recording. The impugned Judgment also acknowledged the agreement dated 01.07.1995 between PAN Records and the respondents representing the Junior Dagar Brothers which permitted PAN Records to manufacture and sell recordings consisting of performances of the Junior Dagar Brothers at the Royal Tropical Institute, Amsterdam on 22.06.1978. However, the said agreement is also clear to the effect that the recording pertains to performance and there is no mention of authorship with respect to Dagar Brothers.



Likewise, reliance has been placed on another license agreement with M/s Navras Records Ltd., U.K. dated 27.03.2007. which also deals with performance rights. At no point in any of the materials produced by Respondent No.1 are the Junior Dagar Brothers expressly recognized or described as the authors of the Suit Composition.

97. Although, there is no mention of authors in the Suit Composition, however, after the combined perusal of the above documents the learned Single Judge in its wisdom went on to hold that:

“In the context of the above evidence, no document has been filed by the Defendants which would show that the Junior Dagar Brothers are not the authors of the suit composition. The third party performances relied upon by the Defendants are subsequent to that of the Junior Dagar Brothers in Amsterdam which dates back at least to 1978, as per the evidence on record. No Shiva Stuti composition of any third party prior to the 1970s has been placed on record by the Defendants. The Defendants have submitted that the Junior Dagar Brothers may have been the first performers of the said composition but they are not the authors of the said composition. However, in the absence of any document to the contrary the said submission cannot be sustained at this stage.

158. Thus, in the opinion of the Court prima facie the Plaintiff has established that the Junior Dagar Brothers are the authors of the suit composition which is an original composition”.

98. The reasoning arrived by the learned Single Judge by presumption of the authorship being in default of no material to contrary having been produced before the learned Single Judge, in our view is not tenable as mere presence of CDs of performance and their inlay cards do not establish authorship, at best they establish their right as performers under Section 38 of the Act but not as authors because these two rights are clearly distinguishable by the statute



where a person can be the performer of a work without being its creator. This distinction can be labelled as deliberate and substantiative, as performance, however skilful, does not amount to any creation.

99. Therefore, by merging these two distinctive rights despite their distinctiveness carved out by the legislation itself, contradicts the already established boundaries between original creation and its rendition. Hence, to infer authorship solely on basis of no contrary material is erroneous as any performer thus can claim authorship by first performing and publishing an original Suit Composition. This is problematic specifically in context of Indian classical music whereas discussed above, the music is transmitted orally through generations without formal documentation or any notations. If such a presumption were accepted, it would enable any performer to take any old compositions into their authorship by merely recording them and publishing them first, thereby copyrighting what is unprotected and is in public domain and therefore enjoying the rights under copyright without creating anything.

100. Furthermore, this presumption of authorship also contradicts the object of the legislation of authorship, which states that fixation is not required to claim authorship in the impugned judgment. The impugned judgment correctly cites legislative intent for the same by perusing the press communique dated 15.09.1992 and discussing about 1995 amendment as prior to 1995 fixation in writing was necessary to claim copyright and clearing that fixation now is not a



perquisite in a musical work under Section 2 (p) and Section 13 of the Act, the impugned held that:

“107. A perusal of the evidence placed by the said Committee before Parliament, along with its report, would show that it was recognised by experts that in Indian classical music, it is not necessary for music notations to be in writing, since Indian classical music did not have a tradition of publishing notations, though, each composition has its own notations”

101. Thereafter, later by assuming the first fixation of a mere performance to authorship it lays reliance on the fixation aspect of the Suit Composition. The impugned judgment treats the fixation of performance on the CDs as fulfilling the requirement of fixation and uses this very same fixation as a ground to *prima facie* hold the plaintiff as authors of the Suit Composition. The relevant para highlighting the reliance of fixation by the learned Single Judge is reproduced below:

“161. The suit composition, having been prima facie established as an original work of the Junior Dagar Brothers, falls in the first category i.e., an original musical work. The suit composition, which is referred to as “Shiva Stuti”, does not include the lyrics (asthayi) performed with the music nor the voice of the Junior Dagar Brothers. It refers only to the musical composition, which forms part of the suit composition i.e., musical notes (swaras), which is then blended with other elements of the Raga Adana and the sultaal in a unique, creative and distinctive manner. The notes of this composition may have never been written down by the Junior Dagar Brothers but they cannot be deprived of the copyright in the said work for this sole reason, especially, since the recording of their performance of the suit composition is sufficient to satisfy the requirement of fixation”.

102. It cannot be so that a fixation which is very well settled from the above discussions, is not a requirement for claiming copyright and as such cannot form the basis of granting authorship, however, it is erroneous to rely on mere performance or fixation to establish



copyright especially in traditional Indian music, where work is transmitted orally. Indian classical music rarely follows a system of written notation or publication. Since ancient time, it is very well known worldwide that teachings in India were given in oral form, also the compositions of Indian music were also taught orally in the *guru-shishya Parampara* (teacher-disciple tradition), where knowledge was passed down through oral learning, improvisation, and repeated performance, rather than formal documentation. Hence, after explicitly declaring that fixation is not required, using fixation and performance as the determinative specifically in the case of Indian classical music would reinstate a fixation requirement in an indirect manner, which is against the legislation's aim and objective.

103. Thus, we can say that the reliance on fixation and performance is contrary to the legislatures' intent and clear distinction in the statute. This presumption in the impugned judgment not only shifts the burden of proof such that the Defendant No.1 must prove authorship instead of the plaintiff, but it also makes it easier for old-traditional musical works to be adopted by performers as their own original work, on the basis of first performance. It gives authorship to performers without requiring actual evidence of their original creation and instead relies on silence as a presumption. In any case, the said analogy is against the basic fundamental of the law of evidence relating to burden of proof.

104. Simply put, performing a composition and its fixation is not the same as composing or authoring it. The plaintiff, correctly shows that



the Junior Dagar Brothers performed this Suit Composition on stage. However, there is **no direct attribution to them as composers, as there are no** written notations, continuous attribution, contemporaneous documentation of creation, etc. proving that the Dagar Brothers originally created the melody or are the composers. The inlay card of the Dagar Brothers owns 1996 album “*Shiva Mahadeva*” did not credit the Junior Dagar Brothers as copyright holders or authors of the “*Shiva Stuti*” composition. This suggests that even the album producers treated the work as a traditional or common work of performance, not as an original composition of the Junior Dagar Brothers. Therefore, we find it difficult to align with the interpretation of learned Single Judge which attributed the photograph and inlay card of CDs to the respondent as the authors of the Suit Composition.

105. Even Section 55(2) of the Act doesn’t come to the rescue of the Respondent No.1 as Section 55(2) states that:

“Where, in the case of a literary, dramatic, musical or artistic work,¹[or, subject to the provisions of sub-Section (3) of Section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears] on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be”.

106. A literal reading of the above Section, makes it clear that the provisions of Section 55(2) of the Act only creates a presumption of authorship, which intends to reduce the burden of evidence on author



to prove authorship where it is otherwise already established by way of work or copies of the work that he is the author and as such lays the reverse burden of proof on the opposing party to disprove.

107. The word “Purported” used in the aforesaid provisions of Section 55(2) has specific significance. The Black law dictionary defines the word “purport” to be:

“The “purport” of an instrument means the substance of it as it appears on the face of the instrument, and is distinguished from “tenor,” which means an exact copy”.

108. Therefore, reading the above definition along with the Section, we can say that the meaning “**purporting to be that of the author**” in literal interpretation would be of that “**copies of work itself must hold in substance that person out as the author or at least that person must appear as an author on the face of it**” and not as something else. The Section in clear terms means that where in the case of musical work, a name purporting to be that of the author, appears on the copies of the work, when it was made, the person whose name so appears shall in any proceedings of infringement of copyright would be presumed to be the author, unless the contrary is proved.

109. Thus, for the presumption under Section 55(2) of the Act, to apply, the minimum threshold is that the person must be named as a purported author on the published copies of the work. Only then does the law raises a presumption of authorship, which the opposing party



may rebut. The provision is essentially a rule of evidence, intended to provide a protective shield to an author (who may or may not be the actual author) against the public at large. The learned Single Judge in the first instance has erred in presuming the Junior Dagar Brothers to be the composer, despite the absence of any evidence or attribution naming them as authors or purported authors of the musical work. This amounted to using one presumption (as to composition) as a foundation to invoke another presumption (as to authorship), which is impermissible in law. The records clearly indicate the Junior Dagar Brothers only as performers, not as composers or purported authors, and hence Section 55(2) cannot be triggered. The said provision can be used only as a shield and not as a sword to claim authorship as the claim of such person as an author would hold good only against a person who claims to be a purported author and not against the actual author. As the Supreme Court cautioned in *Suresh Budharmal Kalani v State of Maharashtra*¹⁶, held that ‘A presumption can be drawn only from facts and not from other presumption by a process of probable and logical reasoning’.

110. In this case, after a perusal of the documents, the authorship of the Junior Dagar Brothers remains wholly uncertain. Even the inlay of the CDs relied upon by the learned Single Judge does not attribute them as composers; at best, it reflects their role as performers. Nowhere in any document do the Junior Dagar Brothers appear, or purport to appear, as the authors of the Suit Composition. Additionally, “*Shiva Stuti*” is admittedly a traditional composition,

¹⁶ 1998(7) SCC 337



based on elements of *Raag Adana*, which is itself in the public domain. It would therefore be untenable to suggest that the Junior Dagar Brothers could be deemed the purported authors of the work in the published copies so as to invoke Section 55(2). Treating performance as a presumption of authorship would run contrary to the legislative intent, which deliberately refrains from equating mere fixation or performance with authorship in the case of musical works.

111. Applying the same, the CD inlay only list the Dagar Brothers as performers/vocalist on the face of it, there is no way, there name is being purported on the copies of the performance as “**authors**”. Hence, the condition under Section 55(2) is not met and performance credits cannot be purported here as credits of authorship. The Section 55(2) only applies and is triggered where work or copies of work itself attribute a person as a purported author, in this matter, thus it would be wrong to infer authorship from different type of credits.

112. Thus, we find merits in the contention of the learned Counsel for the Defendant No.1 that all evidence filed by the plaintiff and relied upon in the impugned judgment relates to mere stage performances and not of composing/authoring the musical work and a bare pleading in the plaint and the replication claiming authorship on the ground that the Junior Dagar Brothers ‘sang’, ‘wrote’, ‘composed’, ‘created’, and ‘performed’ the Suit Composition is erroneous as there is no modicum of evidence filed to show that the combination of swaras or the Suit Composition itself over which copyright is now being claimed was in fact created by the Junior Dagar Brothers.



113. Further, we do not agree with the contention of plaintiff that by singing and performing the Suit Composition at the Royal Tropical Institute, Amsterdam and recording the same, the Junior Dagar Brothers fixed the Suit Composition on a tangible medium, namely the CD mentioned above, which in any manner would be enough to meet the threshold of *prima facie* establishment of exclusive authorship of Junior Dagar Brothers in view of clear distinction between rights of performers and composer/author.

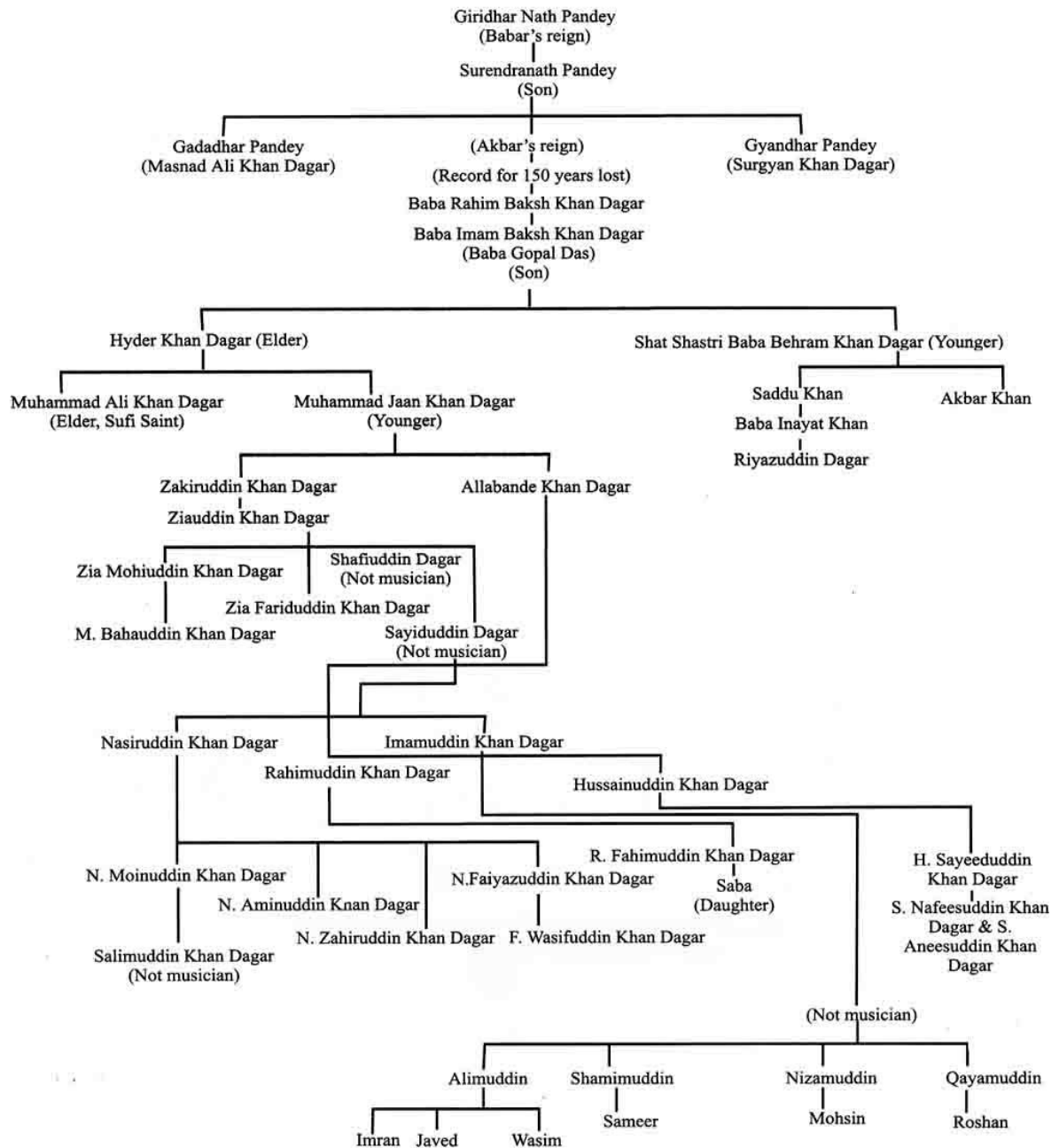
114. Having said so, it is also important to discuss the contention of the Respondent No.1 that the Suit Composition is based on and is part of the broader *Dagarvani/Dhrupad* tradition and not an exclusive composition of Junior Dagar Brothers. The Defendant no.1 contended that the Suit Composition cannot be claimed an exclusive composition of plaintiff as the foundation of Indian classical music as well as *Dagarvani/Dagar* style of Hindustani classical music rests upon its oral transmission across multiple generations, lineages, and practitioners within the Dagar family as well as their disciples. To substantiate this claim of Dagar family, a family tree has been produced by the appellant, which is reproduced below:



2025:DHC:8522-DB



THE DAGAR FAMILY TREE



115. The Defendant No.1 submits that members of other branches of the Dagar Family, **contemporaneous with the Junior Dagar Brothers**, and even third-party musicians and artistes, have publicly performed compositions in *Raga Adana* which are identical to the Suit Composition with their respective disciples. The Defendant No.1 lays reliance on two recordings of such performances:



2025:DHC:8522-DB



- i. Performance of suit composition by Ustad Zia Fariduddin Dagar and his disciple Pandit Ritwiksanyal
- ii. Performance of the Suit composition by H. Sayeeduddin Khan Dagar and his sons S. Nafeesuddin Dagar and S. Aneesuddin Dagar

116. The Defendant No.1 submitted that, Gundecha Brothers, Uday Bhawalkar, Pandit Nirmalya Dey, and others have performed the Suit Composition without attributing any exclusive credits to the Junior Dagar Brothers or acknowledging their alleged copyrights or moral rights. The Defendant No.1 contends that the “*Shiva Shiva Shiva*” as well as the Suit Composition belongs to the traditional, extant corpus of the Dhrupad Hindustani Classical tradition. The plaintiff has failed to establish alleged exclusive ownership in the Suit Composition.

117. We agree with this submission, as these compositions of the *Dhrupad* tradition are typically transmitted orally, shared with disciples, and carried forward collectively as part of a shared cultural traditional repertoire. The record shows that contemporaneous with the Junior Dagar Brothers, other branches of the Dagar family, including the Gundecha Brothers and their disciples, have publicly performed compositions in *Raag Adana* identical to the Suit Composition “*Shiva Stuti*”, **without any attribution of exclusive authorship or composition to the Junior Dagar Brothers**. This demonstrates that the Suit Composition has been preserved and disseminated across generations within the *Dagarvani* tradition across the the Dagar Family and their disciples. Therefore, it would be difficult to attribute exclusive authorship to Junior Dagar Brothers and



also it would **be contrary to the “objective of copyright law”** to allow the plaintiff to claim exclusive authorship and monopolise such a work as it would provide exclusive ownership rights over what is on the face or purported to be a *Dagarvani/Dhrupad* cultural work any exclusive claim would adversely affect how young musicians learn the Indian Classical Music and share composition while training. This Court cannot be oblivious to the fact that Indian classical music preserves lineage by passing on knowledge from Guru to *shishya* and naturally a shishya emulate their Guru and their styles, cultural norms relating to use. Thus, the appropriation and transmission of works in the realm of Indian classical music stand on a fundamentally different footing from that of an ordinary literary, dramatic or artistic work.

118. Therefore, the authorship in these cases have to be proved with respect to Section 55(2) where work or copies of work should at least on the face attribute the person claiming copyright as the **“author”** and not as mere **“performer”**.

119. In any case, the defendants have credited the impugned song to the Dagarvani tradition by running an intro of **“composition based on Dagarvani tradition Dhrupad”**.

120. Therefore, it would be correct to say the song *“Shiva Stuti”* is a part of common *Dagarvani* tradition as it completely undisputedly attributed to it. However, this Court is unable to concur with the prima-facie findings of authorship of the Junior Dagar Brothers to the Suit Composition.



ORIGINALITY

121. The two main prerequisites to claim copyright are (i) authorship and (ii) originality. Since, this Court is unable to subscribe to the reasoning of the learned Single Judge on the aspect of authorship, this Court may not go any further. However, the issue of originality is so intertwined with the concept of authorship that one cannot be examined in isolation from the other.

122. Hindustani music has a set of building blocks that converges in every composition. Hindustani classical music is arranged in *gharanas*, genres, ragas, and *talas*. Each *gharana* or lineage has its own distinctive style. Hindustani classical music provides immense scope for creative freedom, allowing an artiste numerous permutations and combinations, making it practically impossible for all compositions to be identical. The genres, like *dhrupad*, *khayal*, *thumri* etc, each have different melodic and 'svas' or breath protocols. Each *Raga* has its own distinct notes. Every raga has its own set of notes (swaras) and structures such as *aroha* (ascent), *avaroha* (descent), *alaap* (elaboration) and *pakad* (signature phrases), all of which constitute the notational signature of a raga. Similarly, *talas* have distinct rhythmic patterns, and within them, further rhythmic substructures such as *tihais*, *relas*, and *chalans*, alongside other percussive embellishments.

123. Section 13(1) of the Copyright Act, 1957 unequivocally provides that copyright shall subsist only in original literary, dramatic, musical and artistic works. Read conjointly with Section 2(p), which



defines a ‘musical work’, Section 2(ffa), which defines a ‘composer’, and Section 2(d), which declares that in relation to a musical work, the author is the composer, the legislative intent leaves no scope for doubt that originality is not to be understood in abstraction but must necessarily flow from the authorial act of composition. The requirement of originality is thus anchored in the independent skill, labour, and judgment of the composer, without which no copyright can subsist. Furthermore, Section 55(2) of the Act, which provides a presumption of authorship where the author’s name appears on published copies of the work, makes it evident that even evidentiary presumptions under the Act are tied to the identification of an author. The materials relied upon by the plaintiff namely the 1978 Amsterdam recording and subsequent CD releases credit the Junior Dagar Brothers only as performers, not as composers or authors of the “*Shiva Stuti*”. Performance credits, however, cannot be equated with authorship under the Act. To hold otherwise would collapse the statutory distinction between performers’ rights under Section 38 and authorship under Sections 2(d), 2(p), and 2(ffa). Therefore, copyright protection in a musical work requires a demonstrable nexus between originality and authorship, ensuring that what the law protects is not the raw material of tradition, but the intellectual creation of the composer.

124. As per Black’s Law Dictionary, originality in copyright law means:



“(1) The quality or state of being the product of independent creation and having a minimum degree of creativity. Originality is a requirement for copyright protection, but this is a lesser standard than that of novelty in patent law: as in copyright law, to be original, a work does not have to be novel or unique and the degree to which a product claimed for copyright is the result of an author’s independent creation.”

Applying this definition to the present case, it is evident that the mere reliance on established Raagas such as *Raaga Adana* or devotional themes such as the “*Shiva Stuti*” does not by itself negate originality. What requires examination is whether the composition of the respondents was the product of their independent creation involving a minimal degree of creativity, as evidenced by their diary notes and musical arrangement, and correspondingly, whether the appellant’s composition reflects his own independent creative labour in the adaptation and orchestration of the same traditional material. Therefore, the standard of originality does not demand novelty in the patent law sense, but only an independent creative contribution, which must be tested in both the respondent’s and the appellant’s works.

125. Only original works of authors are protected by copyright law. The concept of originality is wholly a collective formation and evolved by the Courts and is not defined under the Act. Throughout the history of copyright law, the meaning of originality has constantly evolved through various decisions, but the current understanding can be deduced from the Supreme Court's well-known decision in *Eastern Book Company* (Supra), where the concept of “originality” has been dealt in detail.



126. Internationally, U.S. laws define originality as work independently created by the author which possesses at least some minimal degree of creativity¹⁷. The requirement of originality under Indian legal system embodies multiple components. In *Eastern Book Company*(supra), the following requirements were outlined for claiming copyright protection:

- i. Independent creation
- ii. Application of Skill, Judgment and Labour
- iii. Expression Not Idea
- iv. More than “Sweat of the brow”
- v. Minimal creativity
- vi. Absence of duplication

127. As mentioned above in the case of *Eastern Book Company* (supra) the Court discussed originality at length, rejecting the “sweat of the brow” doctrine and holding that there must be application of skill and judgment. The relevant para for the same is produced below:

“32. The word “original” does not mean that the work must be the expression of original or inventive thought. The Copyright Acts are not concerned with the originality of ideas, but with the **expression of thought**, and in the case of literary work, with the expression of thought in print or writing. The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the **work must not be copied** from another work—that **it should originate from the author**; and as regards compilation, originality is a matter of degree depending on the amount of **skill, judgment or labour** that has been involved in making the compilation. The words “literary work” cover work which is expressed in print or writing irrespective of the question

¹⁷Feist publications, Inc. v. Rural Telephone Service Co. (499 U.S 340)



whether the quality or style is high. The commonplace matter put together or arranged without the exercise of more than negligible work, labour and skill in making the selection will not be entitled to copyright. The word “original” does not demand original or inventive thought, but only that the work should not be copied but should originate from the author. In deciding, therefore, whether a work in the nature of a compilation is original, it is wrong to consider individual parts of it apart from the whole. For many compilations have nothing original in their parts, yet the sum total of the compilation may be original. In such cases the Courts have looked to see whether the compilation of the unoriginal material called for work or skill or expense. If it did, it is entitled to be considered original and to be protected against those who wish to steal the fruits of the work or skill or expense by copying it without taking the trouble to compile it themselves. In each case, it is a question of degree whether the labour or skill or ingenuity or expense involved in the compilation is sufficient to warrant a claim to originality in a compilation.”

128. Adverting to the facts of the case, on the aspect of originality, the impugned judgment, after a rather limited musicological analysis, observed that although the individual elements in the composition may not be protectable, the selection and arrangement of the common building blocks of *Raga Adana* enjoy copyright protection. Accordingly, the learned Single Judge held that the Suit Composition is original, as it uses specific *taal-sultaal* (10 beats) instead of the *chautaal* (12 beats) which is more common in compositions of *Raga Adana*. Further, the impugned judgment relied on the dragging of the swara “g” to hold that even a minor alteration can produce originality in a musical composition. The relevant para which forms the basis for deciding originality is being quoted herein below:

“137. Coming to the Plaintiff’s work, the various documents place on record, which are also discussed above, including earlier published CDs, agreements, etc. would show that suit composition, which is based on Raga Adana, is the original work of the Junior Dagarvani Brothers. There is no other



work/rendition, which has been placed before the Court, which would demonstrate that the same was either copied from anywhere or was inspired from any other work. The only work that deserves to be considered is the composition of Amir Khusro, which is known as “Yaar-e-man BiyaBiya”. The mere comparison of notes of the suit composition and Amir Khusro’s composition would show that musical works are not identical and they also sound different, when they are played.

*138. The recognition of originality of the suit composition at the prima facie stage is clearly based on verifiable evidence dating back to 1970s. There is no evidence to dislodge arguments of originality of the Plaintiff’s work. The Defendant No.1 has himself placed on record the musical notes of the suit composition and Amir Khusro’s composition, which would show that the Swaras though appear to be similar, are in fact in different octaves. **The change of even one Swara can make a difference in the musical composition. Further, the taal is also not alleged to be the same for both compositions.***

A perusal of the above definition makes it clear that the finding of originality was primarily based on the absence of contrary material. The judgment reiterated the principles of ***Eastern Book Company (supra)***, that originality requires skill and judgment rather than novelty or inventive thought. However, the actual finding of originality was not supported by positive evidence demonstrating the Junior Dagar Brothers’ independent skill and expression. The Copyright Act does not confer originality merely because no evidence to the contrary exists. The reliance of the impugned judgment on the absence of contrary evidence, rather than a demonstration of originality by the plaintiffs, is legally untenable.

129. Furthermore, Hindustani classical music compositions are built upon common building blocks and a framework of rigid rules. Therefore, before undertaking any analysis of originality, it becomes imperative to filter out the commonplace, generic, non-distinctive, and



non-original elements that necessarily flow from the grammar of the Raga system. Significantly, upon analysing the American jurisprudence on originality in musical works, the learned Single Judge observed in paragraph 133 that:

“while requiring removal of common domain elements, [US jurisprudence] also recognises rights in a particular pattern or expression”

This indicates that the learned Single Judge accepted the necessity of excluding elements in the public domain prior to assessing originality.

130. However, from a careful reading of the impugned judgment, this Court finds that the learned Single Judge appears not to have undertaken such an exclusion exercise in respect of the common elements of *Raga Adana* while comparing the plaintiff’s composition with the works attributed to Amir Khusro and with the defendant’s song. Such an omission risks conferring copyright protection over standard, classical musical elements that are already part of the public domain.

131. In contexts of Hindustani classical music, where every composition is bound by the rules of a Raga in terms of sequencing, permissible ornamentation, and evocation of particular *rasa* or emotions, it is inevitable that multiple compositions will contain overlapping features. As the Supreme Court, held in *R.G Anand v Delux Films*¹⁸. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the

¹⁸(1978) 4 SCC 118



2025:DHC:8522-DB



copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work. This principle underscores that the foundational grammar of a Raga belongs to the public domain and cannot form the basis for copyright protection. If originality is inferred merely from the dragging of a single swara or a minor modulation within the confines of a Raga, such recognition would unduly extend copyright protection to minimal variations and risk monopolising essential elements of the public domain. Thus, it is necessary to exclude such common elements and focus on whether there is a substantial and material similarity in the original expression, arrangement, or presentation, thereby stifling the improvisational essence of classical music.

132. Such an approach would also have deleterious implications for the *guru-shishya parampara* the traditional pedagogical framework of Hindustani music which thrives on improvisation of pre-existing compositions. Overprotection of minor alterations would not only curtail artistic freedom but also would render the very process of learning and transmission of this art form vulnerable to infringement claims. This Court is therefore cautious in holding that originality in classical compositions must be assessed only after filtering out elements dictated by the grammar of the Raga system and recognising copyright, if at all, only in the distinctive arrangement or pattern that reflects the composer's independent creative contribution.



133. In any case, this Court finds that the reliance placed in the impugned judgment upon mere absence of proof of copying is insufficient. The evidence adduced upon by the plaintiff pertains only to performance of the “*Shiva Stuti*”, which at best establish the Junior Dagar Brothers as performers, not as composers or authors. No material has been placed on record that demonstrates the origination of the Suit Composition from their independent skill or labour as required under Section 13(1) read with Sections 2(d), 2(p), and 2(ffa) of the Act. The evidentiary presumption under Section 55(2) is also inapplicable, as the CDs and inlay cards relied upon credit the Dagar Brothers merely as vocalists and performers, not as authors. In the absence of any positive evidence showing independent creative contribution by the Dagar Brothers, the requirement of originality collapses and consequently, the claim of copyright cannot be sustained as the evidentiary presumption under Section 55(2) is also inapplicable, the CDs and inlay cards relied upon by the plaintiff credit the Dagar Brothers merely as vocalists and performers, not as authors.

134. In assessing originality in the present case, this Court is guided by the settled principles in *R.G. Anand (supra)*, where the Supreme Court categorically held that:

“there can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work”.

The Court further cautioned that:



“where the same idea is being developed in a different manner, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. But if the defendant’s work is a new work with a different presentation, different arrangement and a different treatment, the same would not amount to infringement”.

135. Applying these principles, it is evident that elements such as the use of *Raga Adana*, devotional invocations of Lord Shiva are mere ideas, themes or *scenes a faire* flowing necessarily from the grammar of Hindustani classical music, and thus forming part of the public domain. Copyright protection, therefore, cannot extend to such common elements but only to their distinctive arrangement or expression by an identifiable author.

136. This principle was also reaffirmed in *Eastern Book Company(supra)*, where the requirement of originality necessarily imports the notion that the work must originate from the author and not be a mere copy of an existing work. The Court in *Eastern Book Company (Supra)* clarified that originality does not demand novelty or non-obviousness, but rather the exercise of the author’s skill, judgment and minimal degree of creativity. Authorship and originality although distinct, are inextricably linked in copyright jurisprudence. Thus, in the context of compilation or derivative works copyright protection will not subsist merely by virtue of labour or capital, but requires that the author infuse the work with some intellectual creation of their own.



137. Therefore, originality carries within it a presumption of authorship, that there is an identifiable author behind the work who has contributed through independent application of skill and judgment. It is this fusion of authorship with originality that lays the foundation stone of copyright protection, ensuring that what is protected is not mechanical labour alone, but the expression of the author's individuality.

138. From the above discussion, we can safely conclude that originality in a work cannot exist in abstraction; it must necessarily be anchored to an author in order to claim copyright and in the present case as it has been already concluded from the first issue, that authorship has been established, then it goes without saying that the claim of originality collapses. Therefore, originality without identifiable authorship doesn't sustain in the eyes of law.

CONCLUSION

139. In view of above discussions, while this Court have given due consideration to the reasoning adopted by the learned Single Judge, we are unable to concur with the conclusions arrived at and consequently we find no merit in the case of plaintiff/Respondent No.1 with respect to authorship, which constitutes the very foundation of a copyright claim.

140. As the claim of authorship is rejected, there is no requirement to go into the other aspect of originality or infringement. It is a well



settled principle that the threshold requirement for any copyright action lies in establishing the subsistence of copyright, and where this foundational requirement fails, no claim of infringement can be entertained.

141. Hence, the present appeal is allowed and the order of the learned Single Judge is hereby set aside. We hereby clarify that this Court has examined the present case at a *prima facie* stage and has not expressed any opinion on merits with respect to authorship or originality, which may be proved otherwise on the basis of leading evidence in the pending suit. The pending applications, if any, are also disposed of in the aforesaid terms. There shall be no orders as to cost.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J (concurring)

1. I have had the advantage of reading the erudite judgment of my learned brother, Om Prakash Shukla, J. While I am in agreement with his conclusion that the appeal is required to be allowed, as the finding of the learned Single Judge that the respondent is the holder of copyright in the composition Shiva Stuti cannot be legally sustained, I deem it appropriate to pen this short concurring opinion, on two fundamental aspects.

2. Whether the learned Single Judge was in error in passing the impugned judgment without requisitioning expert evidence



2.1 Much of the arguments at the Bar, as advanced by Mr. Rajagopal, learned Counsel for the appellant, revolved around the merits of the impugned order and the technical aspects of whether the song *Veera Raja Veera*, composed by the appellant, could be regarded as infringing copyright in the *Shiva Stuti* suit composition. Mr. Rajagopal sought to contend that, as the issue was complex and technical, involving complicated details regarding intricacies of Hindustani Classical Music, the learned Single Judge ought not to have adjudicated the matter without requisitioning the assistance of experts.

2.2 On this aspect, I must confess that I am not in agreement with Mr. Rajagopal. The impugned order has been passed at an interlocutory stage. The learned Single Judge has only adjudicated on an application filed by the respondent under Order XXXIX Rules 1 and 2 of the CPC. At this stage, in my opinion, reliance on affidavits of experts should ordinarily be avoided. An expert, cited by either side, would be bound to depose in favour of the person who has requisitioned her, or his, services. At the stage of adjudicating an application under Order XXXIX Rules 1 and 2 of the CPC, it would be hazardous to rely on the evidence of such experts unless the opposite side has had an opportunity to subject the evidence to cross-examination.

2.3 It is often seen, especially in patent cases, that one side or the other, or at times both, seek to place on record affidavits of experts.



While there is no proscription against placing such affidavits on record, reliance on such affidavits at the stage of adjudication of an application under Order XXXIX Rules 1 and 2 of the CPC cannot, in my opinion, be treated as a very healthy practice. Expert evidence, legally and logically, acquires value only when it is tested in, and survives, cross-examination.

2.4 This position is fossilized in the law. Regarding the nature and character of expert evidence, the Supreme Court, in *State of Himachal Pradesh v Jai Lal*¹⁹, observed thus:

“18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.

19. *The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in court and has to face cross-examination.* This Court in the case of *Hazi Mohammad Ekramul Haq v. State of W.B.*²⁰ concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.”

(Emphasis supplied)

Albeit in the facts of that case, the Supreme Court, in *State of*

¹⁹ (1999) 7 SCC 280

²⁰ AIR 1959 SC 488



2025:DHC:8522-DB



Maharashtra v Damu²¹, held that “without examining the expert as a witness in court, no reliance can be placed on (his testimony) alone”. Relying on this principle, the Supreme Court, in ***Ramesh Chandra Agrawal v Regency Hospital Ltd.***²², held thus:

“21. In *State of Maharashtra v Damu*, it has been laid down that *without examining the expert as a witness in court, no reliance can be placed on an opinion alone*. In this regard, it has been observed in *State (Delhi Admn.) v Pali Ram*²³ that “no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him”.

2.5 Even otherwise, a reading of the order reveals that the learned Single Judge has an intricate knowledge of the nuances of classical music. The order is, by any standards, an order reflecting considerable learning and deep knowledge of the subject. If a learned Judge possesses knowledge of the subject, there is no proscription on the Judge using the said knowledge while rendering the judgment. It would be, then, for the party to whom the judgment is adverse to demonstrate, in appeal or by way of any other sustainable challenge to the order, that the reasoning in the order is erroneous.

2.6 Though Mr. Rajagopal has sought to demonstrate this during the course of arguments, I am in agreement with my learned brother that it is not necessary to enter into that arena. Even otherwise, we are sitting in appeal over an interlocutory order passed by a learned Single Judge. Our scope of interference is, therefore, necessarily

²¹ (2000) 6 SCC 269

²² (2009) 9 SCC 709

²³ (1979) 2 SCC 558



circumscribed and restricted.

2.7 The submission of Mr. Rajagopal that the learned Single Judge erred in rendering the order under challenge, or that the order merits interference *because* the learned Single Judge has not done so is, therefore, rejected.

3 The aspect of “ownership” of copyright

3.1 Even within the circumscribed and restricted scope of our appellate jurisdiction, however, I am in agreement with my learned brother that the impugned order suffers from a fundamental error of principle in holding that the respondent can, even *prima facie*, be regarded as the holder of copyright in the *Shiva Stuti* suit composition.

3.2 I call this an error of principle because the learned Single Judge has treated the existence of evidence which indicates that the Junior Dagar Brothers *rendered*, and *performed*, the suit composition, as *prima facie* evidence that they *composed* it. This is, to my mind, directly contrary to Section 2(d)(ii) read with Section 2(ff) of the Copyright Act, as I would attempt presently to demonstrate.

3.3 The position is clear from a reading of the statute:

(i) Section 51(a)(i)²⁴ of the Copyright Act defines

²⁴ **51. When copyright infringed.**—Copyright in a work shall be deemed to be infringed—
(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—



infringement of copyright. “Copyright”, per Section 14, means the right to do certain acts in respect of the copyrighted work. If anyone other than the owner of copyright does any such act, it amounts to infringement of copyright.

(ii) Copyright in any musical work includes, by virtue of Section 14(1)²⁵, the right, in respect of the work or any substantial part thereof,

- (a) to reproduce in any material form,
- (b) to perform in public,
- (c) to communicate to the public,
- (d) to make a sound recording in respect thereof,
- (e) to make any adaptation thereof, and
- (f) to do any of these acts in respect of any adaptation thereof.

(iii) The learned Single Judge holds that the appellant’s composition *Veera Raaja Veera* incorporates substantial parts of the suit composition *Shiva Stuti* and that, as the owner of copyright in *Shiva Stuti* is not the appellant but Ustad N.

-
- (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright,

²⁵ **14. Meaning of copyright.** – For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

- (a) in the case of a literary, dramatic or musical work, not being a computer programme,—
 - (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
 - (ii) to issue copies of the work to the public not being copies already in circulation;
 - (iii) to perform the work in public, or communicate it to the public;
 - (iv) to make any cinematograph film or sound recording in respect of the work;
 - (v) to make any translation of the work;
 - (vi) to make any adaptation of the work;
 - (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);



Zahiruddin Dagar and Ustad N. Faiyazuddin Dagar²⁶, popularly known as the “Junior Dagar Brothers”, it has resulted in copyright infringement.

(iv) Where, with respect, the learned Single Judge appears to have erred, in our view, is in her finding that the respondent has succeeded in showing, *prima facie*, that the Junior Dagar Brothers are the owners of copyright in the *Shiva Stuti* suit composition.

(v) Section 17²⁷ of the Copyright Act identifies the author of the work as the first owner of copyright in the work.

(vi) “Author”, in relation to a musical work, is defined, by Section 2(d)(ii), as the composer of the musical work.

(vii) “Composer” in its turn, is defined in Section 2(ffa), as the person who composes the music, irrespective of whether he records it.

(viii) The respondent contends that the Junior Dagar Brothers were the composers of *Shiva Stuti* and that copyright therein has passed to him by way of an oral family settlement.

(ix) Section 55(2)²⁸ stipulates that any person, whose name

²⁶ the father of the respondent

²⁷ **17. First owner of copyright.** – Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

²⁸ (2) Where, in the case of a literary, dramatic, musical or artistic work, [or, subject to the provisions of sub-section (3) of Section 13, a cinematograph film or sound recording, a name purporting to be that of the



2025:DHC:8522-DB



appears on published copies of the work *as its purported author*, shall be presumed, in any infringement proceedings, to be the author of the work. The respondent would be entitled to the benefit of Section 55(2), therefore, only if, on any published copy of the suit composition *Shiva Stuti*, the Junior Dagar Brothers are named *as the composers thereof*.

(x) The learned Single Judge has correctly noted, in para 146 of the impugned judgment, that the first aspect that the respondent would first have to establish that the Junior Dagar Brothers were the authors of the suit composition.

(xi) The learned Single Judge has arrived at a *prima facie* finding that the Junior Dagar Brothers were the authors of the *Shiva Stuti* suit composition for the following reasons:

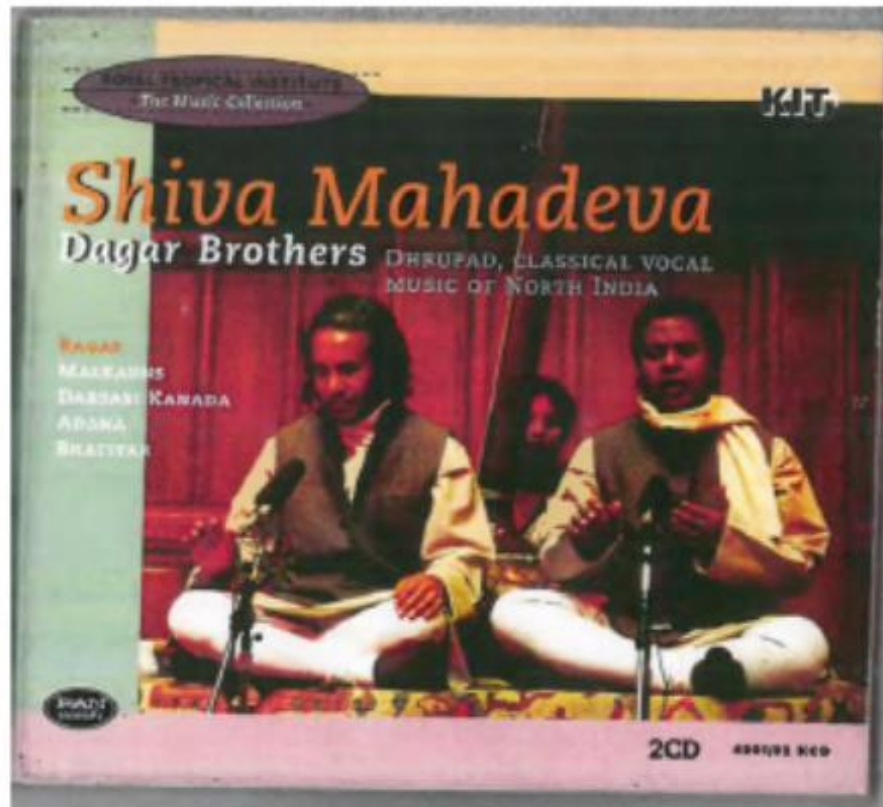
(a) *Shiva Stuti* was *rendered* by the Junior Dagar Brothers on 22 June 1978 at the International Concert in Amsterdam.

(b) Pan Records released an album as part of the musical titled “Shiva Mahadeva Dagar Brothers in 1996”, with the following cover photograph:

author, or the publisher, as the case may be, of that work, appears] on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is provided, to be the author or the publisher of the work, as the case may be.



2025:DHC:8522-DB



- (c) The CD of the same album, was titled
- “Shiva Mahadeva**
Dagar Brothers
Dhrupad, Classical Vocal Music of North India
Ragas Malkauns, Darbari Kanada, Adana, Bhatiyar”

- (d) The Inlay Card of the CD contains the following recitals



2025:DHC:8522-DB



The Music Collection

Music is changing rapidly all over the world. New styles and genres develop, others have nearly disappeared. With the CD series *The Music Collection* the Royal Tropical Institute preserves as well as opens a unique collection of concerts, performances and field recordings.

The oldest original recordings in our archives consist of wax cylinder recordings made in Indonesia between 1923 and 1939. Most of the recordings were made by Jaap Kunst (1891-1966), founder and curator of the ethnomusicological department of the museum of the Royal Tropical Institute from 1936 till 1957. Jaap Kunst also started organizing live performances, mainly *gamelan* music of Indonesia. From the 1950s onwards more and more performances were organized, including artists from all over the world. In 1974 a special department was created for the organization of these events: the Soeterijn Theatre, a platform for non-Western cultures. Nowadays more than 200 performances a year take place in the Main Auditorium and in the Soeterijn Theatre. From 1970 onwards most of the concerts have been recorded, first on analogue tape and later on digital format.

Felix van Lamsweerde
Curator Ethnomusicology

≡
Huib Haringhuizen
Editor

The Royal Tropical Institute (KIT - Koninklijk Instituut voor de Tropen) is an international research and training organization that focuses on improving communications between the Western and non-Western world. Information and research results on rural development, health, culture and educational activities are disseminated through training, international debates, publications, information and documentation, library services, exhibitions, events and theatre performances.

≡
Royal Tropical Institute
P.O. Box 95001
1090 HA Amsterdam Netherlands
phone (+31-20) 5688580
fax (+31-20) 5688584

Recording engineer GERAARD DE RUIJ Sound engineer MARTIN RUIS
Musical director HANS QUANT Photography FELIX VAN LAMSWEERDE AND PHOTODEPARTMENT KIT Design STEPHAN DE SMIT
Digital mastering CYRIEL VAN KAPPEL, AJW MEDIA BV Liner notes FELIX VAN LAMSWEERDE
Transcription and translation hindi texts DR. INDU SRIVASTAVA Producer REIN SPOORMAN Executive producer BERNARD KLEIKAMP

We are grateful to Henk Lansink of Radio Netherlands, Emmie te Nijenhuis, Wasifuddin Dagar (son of Faiyazuddin Dagar) and Laurence Basit of the Dhrupad Society for their kind cooperation.

COVER PHOTOGRAPH The Dagar Brothers on stage in the Royal Tropical Institute, June 22, 1978.

To receive an extensive catalogue of Pan Records, please send two International Reply Coupons to PAN Records



2025:DHC:8522-DB



(e) The Inlay Card of another CD titled “Dagar-Pathway”, which contains recordings of performances by the respondent at the Deben Bhattacharya Memorial Concert on 16 June 2007, reads thus

“after a few more repetitions the music sinks slowly downwards into the lower register, rising again to come to rest finally on the fundamental *Sa*.”

3. *Dhrupad* Composition and *Layakari* in Raga Adana (Track 3)

shiva shiva shiva
shankar aadidev
shambhu bholanaath
yogi mahaadev.
mahaabali shiv, aadi ant shiv
purannsakalkaaj har har mahandev

Shiva Shiva Shiva, God of Gods
 Shambu Bholanath, the Great Yogi, Great Lord.



He has great power, he is the beginning and the end
He helps to complete all work, *Har Har* The Great
Lord

[Translation: Dr. Lalita du Perron]

For the next item in his concert, Wasif chose one of the most popular varieties of the *Kanada group of ragas*, namely the magnificent *Raga Adana* (or *Adana Kanada*, as it is sometimes called). Traditionally performed in the hours between midnight and 3 a.m., this *raga* is often viewed as the lighter counterpart of another late-night jewel of the *Kanada* group, *Darbari Kanada*. It differs from the latter, however, in its tendency to emphasise the higher melodic regions. Both *ragas* normally include a flat *Ga*. *Dha* and *Ni*, though some artists prefer to perform *Adana* without *k*. *Dha*. In this performance it is not sung. The melodic structure is as follows:

Ascent: *Sa Re Ma Pa k.Ni Pa. Ma Pa k.Ni Sa Re Sa*
C D F G Bb C. F G Bh C D C

Descent: *Sa Pa k.Ni Pa Ma Pa Mu k.Ga Ma Re Sa*
C G Bh G F G F Eh F D C

As can be seen. *k.Ga* is omitted from the ascent, while in descent it occurs in the *vakra* (oblique or crooked) phrase *k.Ga Ma Re Sa*, which is one of the characteristic features of the *Kanada ragas*. As with *Bhimpalasi*, the *k.Ni* is often taken slightly sharp in ascent. The most important notes of *Adana* are *top Sa* (the *vadi* - reflecting the *raga's* focus on the upper regions) and *Pa* (the *samvadi*).

Before beginning the performance. Wasif sings a few phrases from the new *raga*. followed by a brief preview of the opening of the composition. Then, while the *pakhavaj* player is retuning his instrument. he introduces the next item. The *dhrupad* composition which follows is a paean to one of the great gods of the Hindu pantheon. Lord Shiva. The text includes many of his epithets - *Shankar* 'the Beneficent'. *Aadidev* 'the First God', *Shambu*, 'the Benevolent', *Bholanaath*, 'the Innocent Lord'. *Yogi* 'the Great Yogi'. *Mahadev*, 'the Great Lord', *Har*, 'the Destroyer'. Images of



2025:DHC:8522-DB



Shiva generally depict him either as a Yogi deeply absorbed in meditation, or as *Nataraja*, Lord of the Dance, performing the *tandav*, a divine dance symbolising the eternal cosmic cycle of creation and destruction. In some forms it is a dance of joy; in others it is wild and frenzied, its every movement animated by a terrible destructive fury. In this performance it is the latter, wilder aspect of Shiva's nature that is being evoked. The composition is, like its *Bhimpalusi* predecessor, in two parts (*sthayi* and *antara*), though set now to *sultaal*, a ten-beat rhythmic cycle which divides into five equal groups (i.e. 2+2+2+2+2). It is rendered at an extremely quick tempo, with each cycle only lasting just over two seconds. The composition starts on the first beat of the *taal*, with each section covering four cycles. In the *sthayi*, notice the distinctive syncopation which occurs towards the end of each cycle, giving the melody its special lilt. As before, the singer sings the opening portion ('*shiva shiva shiva*') a number of times before singing the rest. After repeating the *sthayi*, the singer proceeds directly to the *antara*. With the *antara* complete, the singer returns to the first line of the composition before beginning his *layakari*. The *layakari* involves complex rhythmic manipulation similar to that heard in the previous performance, albeit sung this time to the words of both *sthayi* and *antara*. In keeping with the general melodic orientation of the *raga*, the improvisation is centred mainly in the area around the upper tonic (i.e. *k.Ni*, *Sa* and *Re*). *Gamaks* feature prominently from the start. Spanning numerous *taal* cycles, they imbue the music with a muscular energy, evoking the spirit of Shiva's dance. At other times the singer focuses on a single phrase, repeating it over and over again in various rhythmic combinations, sometimes prolonging it with repeated top *Sa*'s, often hammered out with great force. He punctuates his improvisation with regular returns to the opening line of the composition, following this on occasion with a complete reprise of the *sthayi* or *antam*. As the performance progresses the repeated *Sa*'s become still more prominent, emerging now in powerful bursts like the bolts of lightning hurled by Shiva himself, and interspersed with short, equally intense dabs of *gamak*. Following the reprise of the



antara later, the music takes a softer turn. Rapid swings between upper *Sa* and *k.Ni* alternate with groups of repeated *Sa*'s here to drive the music onwards. With the end in sight the singer increases the volume back to its original level, treating us to one more round of *gamaks* before descending finally through the middle register to settle on the fundamental *Sa*.

4. Composition in *Raga Bengal Bhairav* (Track 4)

*aye ri aye maa
apnon so paayo
achchhe saajan allah milaayo,
us banre ke kaaran sees nivaayo
man maanaa bhar paayo*

(xii) Additionally, the learned Single Judge has relied on an agreement dated 1 July 1995 between Pan Records and the respondent permitting Pan Records to manufacture and sell recordings consisting of performances of the Dagar Brothers, and a similar agreement with M/s Navras Records.

(xiii) We are unable to convince ourselves that the aforementioned material, on which the learned Single Judge has placed reliance, can make out even a *prima facie* case of authorship, of Junior Dagar Brothers, in the suit composition. *It is significant that there is not a single jacket, inlay card, literature or any other material cited in the impugned judgment, which refers to the Junior Dagar Brothers as the composers of the composition Shiva Stuti.* This would ordinarily be unimaginable.

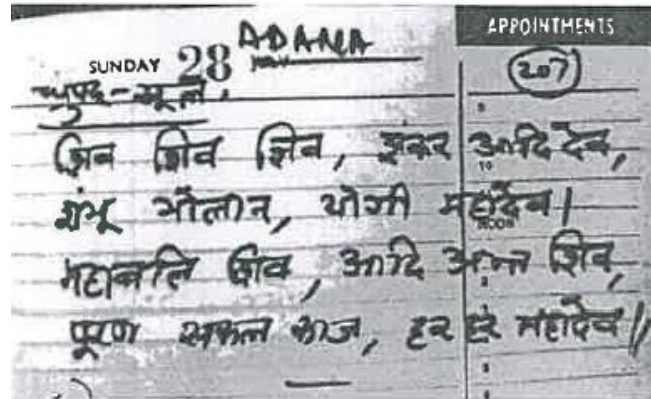
(xiv) The learned Single Judge also refers, while noting the contentions of the respondent, that he was placing reliance on



2025:DHC:8522-DB



the following page from an old diary, stated to be in the handwriting of one of the Junior Dagar Brothers, to show that they were the composers of the *Shiva Stuti* suit composition:



Significantly, the learned Single Judge has herself not relied on the above diary, in arriving at the *prima facie* finding of authorship of the Junior Dagar Brothers of the *Shiva Stuti* suit composition. We, too, are unable to treat this diary as *prima facie* evidence that the Junior Dagar Brothers were the authors of the suit composition. The diary merely notes the lyrics of the composition under the title “ADANA” which is the *raga*. By no standards can it be said that this handwritten diary is any proof, even *prima facie*, that the *Shiva Stuti* suit composition was composed by the Junior Dagar Brothers.

(xv) We, in fact, queried of Mr. Neel Mason as to why, if the Junior Dagar Brothers were in fact the composers of the suit composition *Shiva Stuti*, they have not been identified as the composers anywhere in any album, jacket, CD or Inlay Card, and have only been reflected as rendering the composition. Mr.



Mason candidly acknowledges that he has no answer to offer.

(xvi) We also queried, of Mr. Mason, as to why, if in fact the Dagar Brothers were the composers of the composition Shiva Stuti they never initiated any action against any recording company or anyone else, for failing to reflect their identity as composers of the suit composition Shiva Stuti. To this, too, Mr. Mason has no answer to offer.

3.4 At a plain glance, it is apparent that the material on which the learned Single Judge has placed reliance, though considerable, *only reflect the Junior Dagar Brothers as having rendered, or performed, the suit composition Shiva Stuti at various points of time. The Junior Dagar Brothers have never been named, shown or identified, in any jacket, literature or Inlay Card, as the composers of the suit composition. The presumption of authorship, under Section 55(2) of the Copyright Act, is not, therefore, available in the present case.*

3.5 *Material which indicates that an artiste rendered a musical work, howsoever voluminous, can never lead to a finding, even prima facie, that the artist is the composer of the musical work. Else, every singer would be entitled to claim herself, or himself, to be the composer of every song that she, or he, has rendered.*

3.6 The learned Single Judge observes, in para 152 of the impugned judgment, that the above documents showed “at least a prima facie stage, that there is independent evidence of the suit composition



having been composed and rendered by the junior Dagar Brothers and thereafter the same being published”. We regret our inability to agree, to the extent of the italicized words. The documents merely indicate that the Dagar Brothers rendered the suit composition *Shiva Stuti*. They do not, in any manner of speaking, indicate that they composed the suit composition.

3.7 Insofar as the agreements dated 1 July 1995 between Pan Records and the respondent and 27 March 2007 between Navras Records and the respondent are concerned, they, too, cannot operate as an evidence of the Junior Dagar Brothers as being the composers of the suit composition *Shiva Stuti*. The agreement between Pan Records and respondent merely permitted Pan Records to manufacture and sell recordings consisting of performances of the Junior Dagar Brothers, which included *Shiva Stuti*. Even otherwise, private contracts between the respondent and recording companies cannot constitute evidence of authorship, of the Junior Dagar Brothers, of the *Shiva Stuti* suit composition.

3.8 Para 157 of the impugned judgment notes that no document has been filed by appellant which would show that the Junior Dagar Brothers are *not* the authors of the suit composition. This, in our view, is an erroneous test. The onus was always on the respondent to prove that the Junior Dagar Brothers *were* the authors of the suit composition, so as to enable the respondent to ascertain copyright therein. The fact that the appellant did not identify any other composer of the suit composition, would not *ipso facto* justify a prima



facie finding of authorship of the Junior Dagar Brothers in the suit composition. It is axiomatic in law that the onus of proof shifts only after it is, in the initial instance, discharged by him on whom it rests.

3.9 I am, therefore, in entire agreement with my learned brother that there is no *prima facie* evidence of the Junior Dagar Brothers being the authors of the suit composition Shiva Stuti.

3.10 The sequitur has necessarily to be that no copyright in the composition Shiva Stuti vested in the Junior Dagar Brothers; ergo, no copyright in the said composition can vest in the respondent either.

3.11 In the absence of any *prima facie* case of authorship of copyright in the *Shiva Stuti* suit composition, I am of the opinion that the respondent did not, *prima facie*, even have a sustainable cause of action to maintain the suit against the appellant.

4. We are aware that an appeal against an interlocutory order by the Commercial Court on an application under Order XXXIX of the CPC is an appeal on principle.²⁹ If the principles are correctly invoked and applied by the learned Single Judge, we would not interfere, even if we could arrive at a different conclusion. We deem it appropriate to interfere in the present case because we feel, with greatest respect to the learned Single Judge, that the impugned order errs *on principle* in treating evidence of the Junior Dagar Brothers having *rendered*, and *performed*, the *Shiva Stuti* suit composition as *prima facie* evidence of

²⁹ Refer *Wander Ltd v Antox India Pvt Ltd*, 1990 Supp SCC 727 and *Pernod Ricard (P) Ltd v Karanveer Singh Chhabra*, 2025 SCC OnLine SC 1701



2025:DHC:8522-DB



their having *composed* it. Such an interpretation would, in our view, require us to rewrite Section 2(d)(ii) and Section 2(ffa) to include a *performer* of a musical work as its author. As this cannot be done, we find the view adopted by the learned Single Judge, though *prima facie*, wrong on principle and, therefore, deserving of interference.

5. I agree with my learned brother, therefore, that the impugned judgment is required to be set aside and the appeal allowed.

C. HARI SHANKAR, J.

per Coram

1. In view of the above, the appeal is allowed with no orders as to cost and the Impugned Judgment dated 25 April 2025 passed by the learned Single Judge in IA 21148 of 2023 is quashed and set aside.

2. IA 21148/2023 accordingly stands dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

SEPTEMBER 24, 2025/gunn/At/rjd/pa