

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)**

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

IA NO: GA/1/2023
IP-COM/51/2024
[OLD NO CS/89/2023]

INRECO ENTERTAINMENT PRIVATE LIMITED
VS
BHIKARI BAL FOUNDATION AND ANR

For the petitioner : Mr. Shuvasish Sengupta, Advocate
Mr. Balarko Sen, Advocate
Mr. Shounak Myukhopadhyay, Advocate
Ms. Shyantee Datta, Advocate

For the respondents : Mr. Soumya Ray Chowdhury, Advocate
Ms. Susrea Mitra, Advocate
Mr. Debraj Dey, Advocate

Reserved on : 28.08.2025

Judgment on : 22.09.2025

Ravi Krishan Kapur, J.:

1. This is a suit for infringement of copyright. The petitioner seeks interim reliefs restraining the respondent nos. 1 and 2 from playing or uploading the song "*Sathi Pauti Bhoga*" in the platform maintained by the respondent no. 3. Admittedly, the singer and composer of the song was Bhikari Bal and the lyricist Radhanath Das.
2. In or about 1970, the petitioner alleges to have recorded various Odissi devotional songs of the artist singer and composer Bhikari Bal which were released on gramophone records and include the song, "*Sathi Pauti Bhoga*". The petitioner alleges to have executed an agreement dated 4 June, 1977 with Bhikari Bal for his song "*Sathi Pauti Bhoga*". The

petitioner also relies on an assignment agreement dated 13 June 1979 with Radhanath Das “*Sathi Pauti Bhoga*”. By reason of the above agreements read with a subsequent agreement dated 2 June 1980, the petitioner claims to be the owner of the sound recording as well as the literary, musical and all other underlying rights in respect of the above song. In addition, the petitioner relies on the inlay cards of the records which categorically display the name of the predecessor in interest of the petitioner as producer of the album containing the subject song.

3. In or about 1983, the said song was purportedly released by the petitioner in 33 long play claiming publishing rights since 1983. On 2 November 2010, Bhikari Bal expired. Subsequently, the petitioner was informed of the uploading of the above song by the respondent no. 1 on the platform of the respondent no. 3. In such circumstances, the petitioner had issued a cease and desist notice and thereafter filed this suit.
4. On behalf of the petitioner, it is contended that on a combined reading of the assignment agreements dated 4 June 1977 and 2 June 1980 respectively, the petitioner become the absolute and exclusive owner of the sound recordings as well as the literary, musical and all underlying rights in the song “*Sathi Pauti Bhoga*” and is entitled to protective reliefs. In support of such contentions, the petitioner relies on the decisions in *Saregama India Limited vs. New Digital Media & Anr.* 2022 SCC OnLine Cal 2869 and *Gramophone Company of India Limited vs. Shanti Films Corporation & Ors.* AIR 1997 Cal 63.
5. On behalf of the respondent nos. 1 and 2, it is contended that the petitioner has no rights in respect of the copyright of the literary or

musical works of Bhikari Bal, including any right in respect of the song “*Sathi Pauti Bhoga*”. There is also a serious question of forgery. The signature of Bhikari Bal has been forged. In any event, there is also nothing to demonstrate that any royalty has been paid by the petitioner to the respondent nos. 1 and 2. On a plain reading of both the agreements i.e. 4 June 1977 and 2 June 1980 respectively, they were confined to the sale of *records* only. The agreements were also for a limited duration i.e. 2 years subject to the fulfilment of other clauses in the agreement. The petitioner having paid no royalty during the interregnum is in breach of the agreements. As a result, the petitioner is not entitled to any interim reliefs. In support of such contention, the respondents rely on an unreported decision in *Rupali P. Shah vs Adani Wilmer Limited & Ors.* dated 11 June 2025 passed by the High Court at Bombay in Commercial IP Suit No.101 of 2012, *Saregama India Ltd. v. Mosley*, 635 F.3d 1284, *Western Front Limited vs Westron Inc.* 1987 F.S.R 86, *Saregama India Limited vs New Digital Media & Anr* 2022 SCC Online Cal 2869 and *State of Odisha & Ors vs Sulekh Chandra Pradhan* (2022) 7 SCC 482.

6. For convenience, salient clauses of the 1977 agreement are as follows:

1. For the purposes of this Agreement:

- (a) The word “record” shall mean a double-sided disc record, a magnetic tape or any other sound-bearing contrivance or appliance reproducing a performance or performances by the Artiste alone or along with one or more other Artistes.*
- (b) The word “title” used hereinafter shall mean a performance of a musical and/or other work or a substantial part thereof reproduced on any one side of a record.*

- (c) *The word 33:1/3, 45 and 78 R.P.M. used hereinafter shall mean a record manufactured to play at a speed of Thirty-three one third, forty-five and seventy-eight revolutions per minutes.*
2. *The Artiste shall during a period of two year(s) computed from the 4th 1977 attend at such places and times reasonably convenient to the Artiste, as the company shall require, and perform such titles not being less in number than two (per annum) as the company shall select for reproduction as aforesaid. Furthermore, the Artiste agrees that all or any such titles may be released under the trade marks and labels of or any other mark or label the Company may decide upon.*
 3. *The Artiste shall at the request of the Company repeat any performance for the purposes of reproducing, in the opinion of the Company, a perfect record.*
 4. *The Artiste shall not during the said period of two year(s) tender any performance whatsoever for any person, firm or corporation carrying on business similar to or in competition with that of the Company in all or any of its branches, nor perform for any person, firm or corporation other than the Company for the purpose of such performance being reproduced or rendered audible by means of technical or mechanical contrivances devices or appliances outside the place where such performance takes place and shall take all reasonable steps to see their such performance not to be rendered audible.*
 5. *The Company during said period two year(s) and thereafter shall pay to the Artiste a royalty on nett sales made in any part of the world of all records of the performance of the Artiste as aforesaid calculated on the retail selling price in the country of manufacture for the time being at the following rates:-*
 - (a) *in the case of double-sided disc record reproducing.*
 - (i) *performance by the Artiste alone: 2½ % per side*
 - (ii) *Performance by the Artiste together with one or more other Artiste, a share proportional to the number of Artistes of 2½ % per side*
 - (iii) *A title or titles performed by the Artiste alone or together with one or more other Artiste preceding or in succession to a title or titles performed by one or more other Artiste a share proportional to the number of tiles of 2½ % per side.*
 - (b) *In the case of any other record, the same shall be deemed to consist of Sections, each Section comprising the equivalent of a doubles-sided 33.13, 45 or 78 R.P.M. and royalty shall be calculated on the same basic as provided under (a), (i), (ii), and (iii) above on each such section reproducing the Artiste's performance.*

6. *The Company shall on its absolute be entitled to manufacture, sell and/or catalogue all records of the Artiste's performance recorded under the provisions of this Agreement and to authorise any other person, firm or corporation in any part of the world so to do, when royalties shall be entitled to deduct Tax as demanded by the respective Governments of the countries in which such records are sold.*
7. *The company shall furnish to the Artiste half-yearly a statement showing the number of records of the performance of the Artiste sold in territories mentioned in Clauses "5" and "7" hereof and the amount of royalty due to the Artiste in respect thereof and the Company shall thereupon pay such amount to the Artiste. The Artiste shall at the expense of the Artiste be entitled to receive upon so requesting the Company in writing a Certificate of the Company's Auditors as to the correctness of any such statement.*
8. *The Company shall be the owner of the original plate within the meaning of the Copyright Act, 1957 and any extensions or modifications thereof, of each per performance recorded under the provisions of this Agreement at the time when such plate shall be made. The Company shall be entitled to the sole right of production, reproduction, sale, use and performance (including broadcasting) throughout the world by any and every means whatsoever of the records made under the provisions of this Agreement.*
9. *The Company shall have the right at its sole discretion to commence or discontinue the manufacture, use, cataloguing and/or sale of any records made under the terms of this Agreement and to fix and alter the price of such records. The Company shall also have the absolute right to use the Artiste's name or any assumed name to be selected by the Company at its discretion on the record labels, record envelopes and/or containers and all other advertising materials issued by the Company in respect of any records made under the terms of this Agreement.*
10. *The Company shall be entitled to continue this Agreement for a further successive period of one year(s) upon giving notice in writing to the Artiste. Any notice given under the provisions hereof shall be given before the expiration of the Agreement by registered letter and send to the address of the Artiste last known to the Company.*
11. *The Artiste shall not-*
 - (a) *assign his/her rights under the Agreement, nor*
 - (b) *appoint an Agent to collect on his/her behalf any monies due under the provisions of this Agreement.*

Similar clauses are also to be found in the subsequent agreement dated 2 June, 1980 in respect of all the songs of Bhikari Bal which also includes the song “*Sathi Pauti Bhoga*”.

12. Copyright is a bundle of rights which regulates the creation and use of a range of goods such as books, songs, films etc. The intangible property recognized and protected by copyright law is distinctive and involves a number of rights independent of each other capable of being assigned. In order to make out a *prima facie* case for copyright infringement, any plaintiff must demonstrate (a) valid copyright in the work (b) that the defendants have infringed protected elements of such work.
13. The right of the petitioner to be entitled to any protection for copyright infringement would depend on the interpretation of the 1977 agreement read with the 1980 agreement. In addition, the plaintiff has also relied on an agreement dated 13 June 1979, executed by and between the petitioner and Radhanath Das whereby the lyricist had allegedly assigned all his rights in respect of the song “*Sathi Pouti Bhoga*”. The true meaning of the agreements can only be gathered upon interpreting the same as a whole. On a combined reading of the various clauses in the 1977 agreement, it *prima facie* appears that the 1977 agreement is more in the nature of a contract of service where the petitioner had been assigned the right, title and interest in the songs of Bhikari Bal for a certain duration on certain terms and conditions which included the obligation to make royalty payments.

14. Insofar as the allegation of forgery is concerned, *prima facie*, on a bare examination of the two agreements the two signatures do not appear to be of the same person i.e., the alleged assignor. There is a marked difference, in the manner and style in which “B” has been written in the two agreements. As such, the allegation of fraud and interpolation would require further examination and cannot be adjudicated at this interim stage. This also goes to the root of genuineness and authenticity of the agreements. Assuming that the petitioner could surpass this hurdle, there are other issues which require consideration. The limited duration of both the agreements is for two years. Thus, there is a temporal limitation which the parties had consciously imposed on any right, title or interest under the agreement. (*Saregama India Ltd. vs. Timothy Mosley*, 635 F. 3d 1284). The petitioner has been unable to demonstrate any perpetual right to exploit the said song.

15. Then there is the question of the subject matter of the agreement which *ex facie* deals with “records”. There is nothing to demonstrate that the petitioner even attempted to formalize or regularize or make any payment for exploitation by non-physical mediums including digital mediums. This is not just a question *of degree* but *of kind* and must have been within the contemplation of the parties at the relevant time. There is simply no correspondence to this effect. None of the alleged agreements mention the names of any particular song in their Schedule. There is also nothing to show that the subject song was created during the subsistence of the agreements. An assignment

must identify the work concerned with sufficient clarity so that it can be ascertained. Both the agreements deal with “*records*”. It is true that an absolute assignment would include the right of reproduction and adaptation. On a combined reading of clauses 7 and 9 of the 1977 agreement, ownership in the original plate read with section 2(d)(vi) (as it stood prior to 1994), and section 17 of the Copyright Act, 1957 indisputably recognise and preserve the rights of the author. Nevertheless, it does not naturally follow that such rights have become permanent, perpetual and unconditional.

16. Lastly, there is the question of conduct. The intention of the parties can only be gathered from the writing itself. [*Gramophone Company of India Limited vs. Shanti Film Corporation of India AIR 1997 Cal 63*]. In this context, the conduct of the parties and their course of dealings assume significance. How have the parties acted on the agreements? Indisputably, there is a positive obligation on the petitioner in terms of clauses 5 and 7 above which necessarily involves payments of royalty and furnishing half yearly statements showing the number of records sold. These are crucial obligations imposed on the petitioner. The question of periodic and timely payment also raises an issue of whether the agreements create a lesser right i.e., a licence or an assignment which may require consideration at a later stage. [*Western Front Limited vs. Western INC 1987 FSR 86*].

17. The petitioner has been unable to demonstrate that they have paid a single penny to Bhikari Bal or any of his heirs for exploitation of the songs either in physical form or in non-physical form. On the

contrary, the categorical stand of the petitioner in the affidavit is that no royalty is payable. Nor is there any obligation to furnish any accounts. On a plain reading of the agreements, these clauses impose a fundamental and compulsory obligation on the petitioner. The revenue sharing model as contemplated under the agreements has simply not been adhered to by the petitioner. To this extent, the argument that an assignment can be made with or without consideration is inconsequential. This was the express commercial bargain between both parties. There is also the question of whether breach of such a fundamental term would give a right to the respondents to treat the agreement as discharged. [*Saregama India Ltd. vs. Suresh Jindal & Ors.* @ Para 70 (*Supra*)]. In fact, if consideration as contemplated under the agreements has not passed there is also the question of whether the assignment is complete or not. As a general principle, a person seeking an injunction should not succeed if he is unable or unwilling to carry out his own future obligations. [*Rupali Shah vs. Adani Wilmer Limited and Others* (*Supra*) and *Chappell vs. Times Newspapers Ltd.* (1975) 1 W.L.R. 482].

18. The interim decision relied on by the petitioner in *Saregama India Limited vs. New Digital Media & Anr.* 2022 SCC OnLine Cal 2869 is inapplicable. Significantly, Saregama had not disclosed the decision passed by the United States Courts of Appeal in *Saregama India Ltd. vs. Timothy Mosley* (*Supra*) before the Division Bench. In any event, the disputes in the above decision were not between the original composer and the sound recording company. Neither was the assignment ever in dispute. There was also contemporaneous evidence

to show payment of royalty and receipt of the same between the parties in this case. Ultimately, it is the duty of every Court to give effect to bargain between the parties.

19. In conclusion, there is a serious dispute as the ownership rights of the petitioner in the copyright of the song “*Sathi Pauti Bhoga*”. In view of the above, the petitioner has been unable to establish any *prima facie* case of copyright infringement in its favour. As a result, the balance of convenience and irreparable injury is immaterial. There are issues raised by the respondent nos.1 and 2 which require further examination at trial. One of the justifications behind all copyright law is the ‘*rewards argument*’. A legal gratitude of sorts. To some, this is ‘*doing business*’. To others, it is ‘*slavery redefined*’. [See: *Krishna Iyer J. in Indian Performing Rights Society vs. Eastern Motion Pictures Association (1977) 2 SCC 820 at para 24*].
20. For the above reasons, the ad interim order dated 12 July 2023 is unsustainable and stands vacated. GA 1 of 2023 stands dismissed. However, there shall be no order as to costs. Both parties are directed to take expeditious steps for hearing of the suit.

(RAVI KRISHAN KAPUR, J.)

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