

OCD-21

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE  
COMMERCIAL DIVISION

IA NO. GA-COM/1/2024  
IN CS-COM/715/2024

BENGALI REMIX MUSIC (OPC) PVT LTD.  
VS  
GODHULIBELA MUSIC AND ORS

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : July 29, 2024.

Appearance:

Mr. Abhirup Chakraborty, Adv.

Ms. Swarupa Ghosh, Adv.

...for the plaintiff.

The Court: The plaintiff has filed the present application for grant of ad interim injunction.

The predecessor-in-interest of the plaintiff was proprietorship concerned in the name and style of M/s. Bengali Remix Music (OPC) Private Limited in which one Mr. Biswajit Sau was the proprietor. Subsequently, the said proprietorship concern was converted into one person company wherein the plaintiff is engaged into music business including music producing, preparing, altering, developing, exposing, editing, exhibiting, making and remaking, buying, selling, publish music, audio/video recording, mixing along with sound design, audio editing & live sound and to act as agent, broker, distributor, proprietor, owner of the copyright works acquired by the plaintiff.

During the course of its business, the plaintiff came into contact with proforma defendant who is singer, musician, lyricist of Birbhum, West Bengal who regularly writes and composes songs and music.

The plaintiff had entered into an exclusive assignment agreements dated 8<sup>th</sup> October, 2021 with the proforma defendant who is singer, composer, lyricists of 'Badam Badam' or 'Kancha Badam' for the said song.

The plaintiff obtained exclusive copyright on the said song including rights of hosting, airing, producing and marketing, rights for sale, show, publication, obtaining of copyrights etc. against valuable consideration paid to the proforma defendant. The proforma defendant had duly acknowledged payment of monetary consideration as furnished in the Deed of Assignment.

By the Deed of Assignment, the plaintiff became whole and sole exclusive copyright holder of the song 'Kancha Badam' including sole and absolute and exclusive owner of all rights of the said song without any limitation or restriction.

The proforma respondent had also transferred all his rights and interest in the said song 'Kancha Badam' in favour of the plaintiff including all rights of publication and sale of live recording of the performance of the said song. By virtue of Deed of Assignment, the plaintiff had obtained copyright registration on 6<sup>th</sup> December, 2022 with effect from the year 2021.

The plaintiff has also obtained trade mark registration on the song 'Kancha Badam' being Trade Mark No. 5714227 in Class 9 and Trade Mark No. 5714240 in Class 35. The plaintiff released the song/music 'Kancha Badam' on 10<sup>th</sup> December, 2021 through facebook page 'Bengali Remix Music' on 12<sup>th</sup> December, 2021. The release of said song 'Kancha Badam'

became famous overnight and created a sensitivity in the music industry and in public and it became famous throughout India across languages.

The plaintiff had entered into an agreement with the distribution company, namely, Believe Music, a global digital music company headquartered in France for distributing the said song.

On 30<sup>th</sup> December, 2024 the plaintiff received a copyright claim popularly known as copyright strike in music industry from Phonographic Digital Limited (PDL) who is the defendant No. 2 through Saavn Music platform. On enquiry the defendant No. 2 informed the plaintiff that the defendant No. 2 derived rights from the defendant No. 1 who is the proprietor of Godhuli Bela Music.

The plaintiff has communicated the same to the proforma defendant and in reply, the proforma defendant informed the plaintiff that the defendant No. 1 has misled the proforma defendant and has obtained signature of the defendant No. 1 by manipulating the document as assignment agreement dated 13<sup>th</sup> December, 2021. The defendant No. 1 after obtaining the signature of the proforma defendant in the subsequent assignment agreement under the pretext of future projects and has misused the said agreement to illegally exploit the said 'Kancha Badam' song in which the plaintiff is having exclusive rights. The defendant No. 2 who is music distributor of the defendant No. 1.

The defendant No. 2 again gave copyright strike /copyright claim on Wynk Music platform and was communicated to the plaintiff by e-mail dated 9<sup>th</sup> February, 2022. The defendant No. 2 again raised copyright claim through Gaana under a communication sent to Believe Music which was communicated to the plaintiff by e-mail dated 14<sup>th</sup> February, 2022.

The plaintiff by an e-mail dated 17<sup>th</sup> February, 2022 clarified his right to the defendant No. 2 but even though the defendant No. 2 continued giving illegal copyright claims/strikes against the plaintiff copyright song 'Kancha Badam'.

The defendant No. 1 had also permitted one Pavel Dhaliwal Digital, the defendant No. 3 herein for using the plaintiff's copyright song 'Kancha Badam' song in live and monetary consideration. The defendant No. 3 has also get illegal copyright claims of the petitioner's song 'Kancha Badam'.

Counsel for the plaintiff submits that the defendant Nos. 1, 2 and 3 have violated the copyright of the plaintiff and have caused severe loss and damages, the plaintiffs who are continuing causing damages and loss of the plaintiff.

Counsel for the plaintiff submits that being aggrieved with the communication of the defendants, the plaintiff had also approached the police authority and when the police authority have not taken any steps, the plaintiff has also approached before the writ Court by filing writ application for taking action.

The defendant No. 1 has filed the suit against the plaintiff and the proforma defendant before the learned Court of Civil Judge, Senior Division, Bolpur, Birbhum, West Bengal being Title Suit No. 130 of 2023 and the said suit is still pending.

Counsel for the plaintiff submits that the plaintiff had also filed the suit before the learned Court of Civil Judge, Junior Division, Baruipur, being Title Suit No. 570 of 2023 but subsequently, the plaintiff has withdrawn the suit with liberty to file afresh and accordingly, after getting liberty from the learned Court, the plaintiff has filed the present suit.

Counsel for the plaintiff submits that the defendants have violated the exclusive rights of the plaintiff as the plaintiff has got the copyright as well as trademark upon the song 'Kancha Badam' but the defendants are infringed the rights of the plaintiff by using the said music in the different platforms.

Heard learned Counsel for the plaintiff. Perused the materials on record.

This Court finds that the proforma defendant has entered into an Deed of Assignment on 8<sup>th</sup> October, 2021 with the plaintiff company wherein the proforma defendant has accepted an amount of Rs.20,000/- and it was with further condition that the producer earns profit from the said song, namely, 'Kancha Badam' even predecessor may give lump sum payment as reward to the proforma defendant.

In the said assignment it is also categorically mentioned that the producer alone as the first owner shall be solely, absolutely and exclusively entitled to own the rights and the Intellectual Property Rights of the song 'Kancha Badam' without any limitation, restriction or exclusion. It is also mentioned that the producer shall solely and without recourse to the artist be entitled to exploit the said song 'Kancha Badam' and parts thereof and producer solely shall be entitled for all revenues, rights, income and realization from such exploitation.

The plaintiff has also obtained the copyright and trademark as per the own objects provided by proforma defendant. It is found from the record that the defendants are using categorically trademark of 'Kancha Badam' in relation of goods and services of the plaintiff which is likely to create confusion and deception in the minds of general public and the members of

the trade and likely to have association for the plaintiff's trademark 'Kancha Badam'.

This Court finds that the petitioner is the registered proprietor of the mark 'Kancha Badam' and is exclusively entitled to use the mark in relation to the said song and as such, this Court finds that the plaintiff has made out the prima facie case and balance of convenience and inconvenience in his favour. This Court finds that if at this stage, the defendants particularly defendant Nos. 1, 2 and 3 are not restrained from infringing the registered trademark of the plaintiff's song 'Kancha Badam', the plaintiff will suffer irreparable loss and injury.

In view of the above, the defendants, their men, servants, agents, Officers, distributors, representatives, assigns or anyone claiming through or under it are restrained from in any way or manner infringing the registered copyrighted song 'Kancha Badam' belonging to the plaintiff by using, publishing the identical and deceptively similar to the song of the plaintiff till 3<sup>rd</sup> September, 2024.

The plaintiff is directed to serve the copy of the application, documents to the defendants and to file affidavit of service on the returnable date.

Let the matter appear on 3<sup>rd</sup> September, 2024.

(KRISHNA RAO, J.)