



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19th March, 2024

Pronounced on: 24th May, 2024

+ **CS(COMM) 715/2022 & I.As. 21396-21397/2022, 21428-21430/2022, 21794/2022, 21814/2022**

GLOBAL MUSIC JUNCTION PVT. LTD Plaintiff

Through: Mr. Dushyant Dave and Mr. Akhil Sibal, Senior Advocates with Mr. Yashvardhan, Mr. Rhia Marshall, Ms. Kritika Nagpal, Mr. Gyanendra Shukla, Mr. Akshay Gupta, Mr. Akshat Malpani, Ms. Ayushi Gaur, Ms. Asavari Jain and Mr. Adityaraj Patodia, Advocates.

versus

ANNAPURNA FILMS PVT. LTD., & ORS Defendants

Through: Mr. Neel Mason, Mr. Vihan Dang, Ms. Pragya Jain, Mr. Ujjawal Bhargava and Mr. Aditya Mathur, Advocates for D-5. Mr. Sandeep Sethi, Senior Advocate with Ms. Samiksha Godiyal, Mr. Govind Manoharan, Mr. A. Karthik, Ms. Smrithi Suresh, Ms. Sreepriya, Ms. Gunjan Rathore, Mr. Nishchaiy Sharma and Mr. Sumer Seth, Advocates for D-6.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J.:

I.A. 4065/2024 (under Order XXXIX Rule 2A read with Section 151 of the Code of Civil Procedure, 1908)



The Controversy in Brief

1. The instant lawsuit arises from an alleged breach of a Production Agreement dated 27th May, 2021, between the Plaintiff, a music company specializing in the production, distribution, and monetization of music and entertainment content, and Defendant No. 6, a renowned Bhojpuri artist engaged in singing, dancing, and acting. The Plaintiff contends that under the said agreement, all copyright in the songs/ content created by Defendant No. 6 during the term of the said agreement, vested with the Plaintiff. Defendant No. 6 has infringed the Plaintiff's copyright and exclusivity obligations by creating content and allowing third parties (Defendant Nos. 1 to 4 and 7 to 14) to promote and monetize it on Defendant No. 5's platform (YouTube). This infringement prompted the Plaintiff to file the present lawsuit. Defendant No. 6 has denied the allegations and raised several legal and factual defences to oppose the reliefs sought by the Plaintiff.

2. Pending final adjudication of the lawsuit, the Plaintiff sought interim relief in the form of an injunction. This relief was initially granted on an *ad-interim* basis, later vacated, but then subsequently reinstated in specific terms by the Division Bench of this Court in its judgment dated 5th September, 2023, in FAO(OS)(COMM) 7/2023. The judgment granted limited injunctive relief, clarifying that Defendant No. 6 was not precluded from singing, acting, or dancing in the Bhojpuri Film Industry, on stages, social media platforms, and national television channels.

3. Despite the injunction being directed against him, it is Defendant No. 6 who has invoked the contempt jurisdiction of this Court against the Plaintiff, under Order XXXIX Rule 2A and Section 151 of the Code of Civil Procedure, 1908 (CPC), alleging wilful disobedience of the injunction order.



Defendant No. 6 (Applicant) claims that the Plaintiff (Non-Applicant No. 1) has distorted and miscommunicated the terms of the injunction order to Defendant No. 6's collaborators, falsely implying that the order only permits exclusive collaborations with the Plaintiff. This deliberate misrepresentation, according to Defendant No. 6, amounts to contempt of court. The Plaintiff has, through their contumacious acts, severely hindered Defendant No. 6's professional engagements and left him without any opportunities to work, despite the Court's clear directions allowing him to work across various platforms and industries. The Plaintiff, while denying the allegations, strongly opposes the maintainability of the present proceedings.

The Factual Backdrop

4. Before dealing with the contentions raised by the parties, it would be apposite to note the factual backdrop leading to the filing of the instant application:

4.1. The Plaintiff, Global Music Junction Pvt. Ltd., is engaged in *inter alia* the business of production, aggregation, distribution and monetization of music and entertainment content. The Defendant No. 6, Mr. Shatrughan Kumar also known as Khesari Lal Yadav, is a popular Bhojpuri artist, involved in singing, dancing and acting.

4.2. After conducting extensive negotiations, Plaintiff and Defendant No. 6 executed a Production Agreement dated 27th May, 2021, effective from 1st June, 2021.¹ In terms thereof, the Plaintiff was granted ownership of all intellectual property rights in the content/ songs created by Defendant No. 6 during the term of the Original Agreement. In particular, Defendant No. 6

¹ "Original Agreement"



committed to exclusive collaboration with the Plaintiff for content creation/ production and agreed not to engage with any third party for the same, except under conditions specified in the Original Agreement.

4.3. Thereafter, pursuant to disputes emerging, parties entered into an Addendum dated 7th February, 2022, executed on 3rd March, 2022. Accordingly, the term of the Original Agreement stood extended till 30th September, 2025. Further, certain modifications were introduced to the Original Agreement. Monthly song-delivery quotas were adjusted to eight (8) songs per month, with payments structured on a per-song basis, including a 10% annual profit share. Moreover, exclusivity obligations were relaxed, allowing Defendant No. 6 to engage with other parties subject to the Plaintiff's right of first refusal. Pertinently, the ownership of copyright and intellectual property rights remained unchanged from the Original Agreement².

4.4. The Plaintiff instituted the present suit alleging that Defendant No. 6 had created content in breach of the terms of the Agreement and allowed third parties to promote and monetize the same by publishing/ uploading such content on YouTube, the platform of Defendant No. 5.

4.5. On 14th October, 2022, finding a *prima facie* case in favour of the Plaintiff, an *ex parte ad-interim* injunction was granted³. The restraint was articulated as follows:

“26. Accordingly, Defendants No. 1 to 4 and Defendants No. 7 to 14 are restrained from showing, releasing, launching, airing or monetizing all contents created by Defendant No. 6, which are in breach of the copyrights and Intellectual Property Rights of the Plaintiff granted under the

² Original Agreement along with the Addendum to the same are collectively referred hereinafter as “*the Agreement*”

³ “*Ex-parte Order*”



aforementioned Agreement entered into with the Plaintiff, on platforms like YouTube and other media platforms like Spotify, Jio Saavan, Wynk etc., and Defendant No. 6 will also not create any third party right in breach of the Original Agreement and the Addendum entered into with the Plaintiff, till the next date of hearing.”

4.6. Thereafter, on an application [I.A. 19779/2022] under Order XXXIX Rule 4 of the CPC, the injunction granted *vide* the Ex-Parte Order was vacated by a judgment dated 6th January, 2023⁴. Consequently, Plaintiff’s application seeking interim injunction [I.A. 16789/2022] stood dismissed.

4.7. This Vacating Order was assailed by the Plaintiff in appeal before the Division Bench. In a detailed judgment dated 5th September, 2023 in FAO(OS)(COMM) 7/2023⁵, the Division Bench set aside the Vacating Order and reintroduced the restraint against Defendant No. 6. However, this time the injunction was issued on specific terms, which differed from those of the Ex-Parte Order. It was thus stipulated as follows:

“88. Accordingly, keeping in view the aforesaid conclusions, the impugned judgment is set aside and this Court injuncts the Respondent No.1/ Defendant No.6 from engaging with any third person including Respondents No.2 to 5 and/ or Appellant/ Plaintiff’s competitor for monetising of any new song till 30th September, 2025, except when the Appellant/ Plaintiff refuses to accept delivery of the said song subject to the Appellant/ Plaintiff proving its bonafides by depositing the balance fee (i.e. Rs.2.20 crores) with the Registry of this Court. The release of the said amount shall abide by final judgment/order to be passed by the learned Single Judge. To place the matter beyond controversy, it is clarified that the Respondent No.1/ Defendant No.6 can continue to act, sing, dance in the Bhojpuri Film Industry as well as on national TV channels, social media platforms and on stages, but he can't sell his new songs to distributors/ music companies/ producers/ third parties like Respondents No.2 to 5 etc. till the Appellant/ Plaintiff refuses to accept delivery of the said new songs.”

⁴“Vacating Order”

⁵“DB Order”



4.8. The Plaintiff sought to enforce the aforementioned directions by issuing several notices/ communications all dated 21st September, 2023, to various entities, including collaborators of Defendant No. 6, Plaintiff's competitors and social media platforms such as YouTube LLC (Defendant No. 5/ Non-Applicant No. 2). An illustrative excerpt of one such communication is extracted hereunder for clarity:

"5. On October 14, 2022, the Delhi High Court issued the Restraining Order 1, directing the Defendants to refrain from showing, releasing, launching, airing, or monetizing any content created by Mr. Khesari Lal Yadav that infringed GMJ's copyrights and intellectual property rights, particularly on platforms such as YouTube, Spotify, Jio Saavan, Wynk, and others. Mr. Khesari Lal Yadav was also restrained from creating any third-party rights in violation of his agreement with GMJ. Please refer to paragraphs 25 and 26 of the Restraining Order 1 annexed hereto as Annex 1.

6. On January 6, 2023, the learned Single Judge of the Hon'ble Delhi High Court vacated this order ("Jan 6 Order"). Aggrieved by the Jan 6 Order, GMJ filed an appeal bearing No. (FAO(OS) (COMM) 7/2023) before the Division bench of the Hon'ble Delhi High Court.

7. By way of the Restraining Order 2, the Division bench of the Hon'ble Delhi High Court set aside the Jan 6 Order in its entirety and as a result the Restraining Order 1 applied with full force and effect. Furthermore, the Restraining Order 2 has explicitly injuncted and restrained the Artist from engaging with any third person and/ or GMJ's competitor for monetizing of any new song till 30th September, 2025. Please refer to paragraph 88 of the Restraining Order 12 annexed hereto as Annex 2.

...xxx...

...xxx...

...xxx...

12. In light of the above, we hereby call upon you to:

a. Immediately and no later than within 48 hours of the receipt of this notice, and in compliance with the Restraining Order 1, cease and desist from monetizing the Prohibited Songs and any content created by Mr. Khesari Lal Yadav during the Term and ensure that all future proceeds, if any, are held by you in trust for our client;

b. Immediately and no later than within 15 days of the receipt of this notice, render accounts in relation to all income and revenue generated by you in respect of the Prohibited Songs, the copyright in which vests exclusively with



GMJ; and c. Immediately and no later than within 30 days of the receipt of this notice, pay to GMJ all income and revenue generated by you in respect of the Prohibited Songs. 13. If you fail to comply with the directions set out at paragraph 12 above, we will be constrained to initiate legal proceedings entirely at your cost.”

4.9. From the above, it is seen that although the Plaintiff’s legal notices reference all three relevant orders passed by the Court – i.e. the Ex-Parte Order, Vacating Order and DB Order – however, the Plaintiff has categorically stated that the DB Order (referred to above as “Restraining Order II”) had the effect of reinstating the Ex-Parte Order (referred to above as “Restraining Order I”). Thus, the Plaintiff effectively called upon the recipients of the notices to comply with the directions issued in the Ex-Parte Order, as opposed to the DB Order.

4.10. In view of the aforementioned factual background, Defendant No. 6 has filed the instant application alleging that pursuant to the Plaintiff’s legal notices, several songs of the Defendant No. 6, which were outside the scope of the injunction granted by the DB Order, had been taken down from various music streaming platforms, including YouTube. The Plaintiff’s threat of legal action in these communications has ostensibly left Defendant No. 6, a well-known actor, singer, and dancer, devoid of any professional opportunities. Consequently, Defendant No. 6 argues that the Plaintiff has misrepresented the Court’s directions and, therefore, should be held in contempt of court.

4.11. On 21st February, 2024, after hearing the Senior Counsel representing Defendant No. 6 and the Plaintiff, this Court adjudged the Plaintiff’s actions as *prima facie* contempt of court, and accordingly directed the Plaintiff to issue clarificatory notices. Further, the Plaintiff was also restrained from directly writing to any party to seek enforcement of the injunction order. The relevant observations made in the said order are reproduced as follows:



“8. The Plaintiff could not have enforced the Ex-parte Order dated 14th October, 2022, as the said order had ceased to exist. Firstly, the Ex-parte Order stood merged with the subsequent order vacating the same; and secondly, while the Division Bench set aside the Vacation Order, it did not restore the Ex-Parte Order. Thus, the directions for injunction issued against Defendant No.6, delineated at Paragraph No. 88 of the Division Bench Order, are presently the only restraints/ constraints operating against Defendant No. 6, and nothing more. Therefore, in their notices, the Plaintiff ought not to have called upon the recipients to act in compliance of the Ex parte Order dated 14th October, 2022, as this is explicitly a misrepresentation of the directions issued by the Court. This action undermines the integrity of the judicial process and places the Plaintiff to be liable for contempt for nonadherence of binding directions.

...xxx...

...xxx...

...xxx...

10. Plaintiff shall enclose a copy of this order and dispatch fresh notices to all such persons/ entities/ platforms to whom notices were originally sent, within a period of 48 hours from the date this order is uploaded, i.e. on or before 24th February, 2024. Pursuant thereto, Plaintiff shall file an affidavit delineating the actions taken in compliance with the aforementioned directions prior to the next date of hearing.

11. Further, since the Plaintiff has misconstrued the orders of the Court, this Court finds it pertinent to clarify that the Plaintiff shall not directly write to any party seeking enforcement of the order of injunction. On this issue, Mr. Sibal argues that in case the Plaintiff is not permitted to directly write to the concerned entities to seek enforcement, the injunction granted by this Court would effectively be nullified. However, the Court deems this argument untenable, as the clarity and precision of the Division Bench Order ensures that the Plaintiff's rights and interests are adequately safeguarded without the need for direct unilateral enforcement actions. Needless to say, the Plaintiff is at liberty to approach the Court, at any stage necessary, to seek enforcement of its orders and also in case of any violation thereof. Nonetheless, this direction is issued in light of the Plaintiff's aforementioned misuse of the Court's orders with the aim of ensuring that enforcement of the Court's orders remains within the scope of judicial oversight, thereby preserving the procedural sanctity as well as the rights of all parties involved.”

4.12. The above findings were based on a *prima facie* assessment of the case, and the Plaintiff was afforded time to file a reply to the instant application,



Nonetheless, the Plaintiff opted to appeal the order dated 21st February, 2024. However, the Division Bench of this Court, noting that the order dated 21st February, 2024 was an *ad-interim* order, remanded the matter back to this Court for further consideration⁶. Under these circumstances, on 19th March, 2024, this Court heard the Senior Counsel for both parties on the merits of the above-captioned application.

Contentions on behalf of Applicant/ Defendant No. 6

5. Mr. Sandeep Sethi, Senior Counsel for Defendant No. 6, has advanced the following submissions:

5.1. The Plaintiff has wilfully violated the terms of the injunction granted *vide* the DB Order by misrepresenting the restraint directions operating against Defendant No. 6. In the legal notices issued by the Plaintiff, they have averred that the DB Order had the effect of reinstating the Ex-Parte Order, which would apply “*with full force and effect*”. Despite being cognizant of the specific injunction granted by the Division Bench, the Plaintiff has called upon the recipients of their legal notices to take action in terms of the Ex-Parte Order, which was no longer in force or existence. Such actions reflect the contumacious conduct of the Plaintiff.

5.2. The directions issued in the DB Order relaxed the rigour of the injunction directions issued by the Ex-Parte Order. The DB Order only prohibited the sale of “*his new songs*” until the Plaintiff refused to accept delivery of the same. This must be construed to mean songs produced subsequent to the DB Order, i.e., after 5th September, 2023. Furthermore, the specific use of the phrase “*his new songs*” indicates that the injunction

⁶ *Vide* Order dated 14th March, 2024, in FAO(OS)(COMM) 49/2024.



directions covered only songs *produced* by Defendant No. 6, i.e., songs originating from and owned by him, not other songs wherein he has only offered his services as an actor, singer, or dancer. However, due to the Plaintiff's legal notices, various songs not produced by Defendant No. 6 have been taken down. Thus, the Plaintiff's legal notices seeking the enforcement of the Ex-Parte Order have not only caused harm to Defendant No. 6 but also misrepresented and overreached the directions issued by the DB Order.

5.3. The present application under Order XXXIX Rule 2A of the CPC is maintainable. A plain reading of the said provision indicates that it can be invoked by any person injured by the breach of an injunction or the terms on which such an injunction was granted. As noted above, the DB Order granted liberty to Defendant No. 6 to continue to "*act, sing, dance in the Bhojpuri Film Industry as well as on national TV channels, social media platforms and on stages...*". In view of this liberty granted, which is an essential term of the limited injunction granted by the Division Bench, Defendant No. 6 would be considered a beneficiary of the injunction granted by the DB Order. Hence, given the fact that the Plaintiff's contumacious conduct has resulted in a curtailment of the liberty so granted, Defendant No. 6 would be entitled to seek relief under Order XXXIX Rule 2A of the CPC.

5.4. Even if the application is not maintainable under Order XXXIX Rule 2A of CPC, the Court would not be powerless to take cognizance of the abuse of process by the Plaintiff and issue corrective directions in that regard. Section 151 of the CPC read with the Contempt of Courts Act, 1971⁷, vests the Court with wide powers to rectify wrongs committed by parties. In fact, it is an established position of law that Section 151 of CPC empowers the Court

⁷ "CC Act"



to even dismiss suits in case the same is found to be necessary in order to remedy an abuse of process. To support this contention, reliance is placed on the judgment of this Court in *Vidur Impex and Traders Pvt. Ltd. v. Pradeep Kumar Khanna & Ors.*⁸ and the Supreme Court's observations in *K.K. Velusamy v. N. Palanisamy*⁹.

5.5. The Plaintiff has attempted to justify their actions by claiming *bona fide* misinterpretation of the Court's directions. This explanation is not sustainable to avoid an action of contempt. The contumacious actions of the Plaintiff do not arise from any ambiguity in the Court's orders but rather reflect a deliberate attempt to obfuscate the terms of the DB Order. The Plaintiff's lack of *bona fides* is evidenced by their wilful disregard for the explicit provisions of the DB Order and the absence of any unreserved apology, despite having been found *prima facie* liable for contempt. In such circumstances, the Court cannot permit the Plaintiff to take unfair advantage of their own breach of the injunction by simply attributing it to a purportedly *bona fide* misinterpretation, and such conduct must be held to amount to contempt. This argument is substantiated by the observations of the Supreme Court in *All Bengal Excise Licensees' Association v. Raghendra Singh & Ors.*¹⁰ and this Court in *Antony Raod Transport Souldution Pvt. Ltd. v. Varsha Joshi & Ors.*¹¹.

5.6. The present case is filed by the Plaintiff only seeking to enforce the negative covenant, and not for specific performance of the Agreement between the parties. Thus, the Plaintiff cannot press for the delivery of eight

⁸(2017) 241 DLT 481.

⁹(2011) 11 SCC 275.

¹⁰(2007) 11 SCC 374

¹¹2023 SCC OnLine Del 2266



(8) songs in terms of the Agreement, a position supported by the observations in the DB Order at Paragraph No. 49.

5.7. Given the clear overreach of the DB Order committed by the Plaintiff, the present application must be allowed, and the Plaintiff ought to be restrained from issuing direct notices to third parties. Further, the songs removed pursuant to the Plaintiff's notices must be directed to be restored on the respective social media platforms.

Contentions on behalf of Non-Applicant No. 1/ Plaintiff

6. Mr. Dushyant Dave, Senior Counsel for Plaintiff, has strongly controverted the aforementioned submissions. The contentions advanced by him on behalf of the Plaintiff are summarised as under:

6.1. The present application is not maintainable under Order XXXIX Rule 2A of the CPC. Such an application can only be filed by a party in whose favour an injunction order has been granted under Order XXXIX Rules 1 and 2 of the CPC, and only against a party against whom such an injunction operates. In the present case, the DB Order does not grant any injunction in favour of Defendant No. 6. Moreover, the only direction issued to the Plaintiff pertained to making a monetary deposit in Court, which cannot be interpreted as a restraint. Hence, there is no basis for Defendant No. 6 to claim that the Plaintiff violated the directions issued in the DB Order, and thus, there is no occasion to file the instant application, which ought to be dismissed at the threshold. In support of this contention, reliance is placed on the judgments of the Supreme Court in in *Food Corporation of India v. Sukh Deo Prasad*¹²,

¹² (2009) 5 SCC 665



and *State of Bihar v. Rani Sonabati Kumari*¹³, as well as this Court's judgment in *Sital Dass Rakyan & Anr. v. Jain Khartargachh Sangh (Regd.) & Ors.*¹⁴.

6.2. The instant application has only been filed to circumvent the directions issued by the DB Order. Although Defendant No. 6 had approached the Supreme Court *via* a Special Leave Petition (SLP) to assail the DB Order, the same is still pending under defects. Thus, without diligently pursuing the said remedy, Defendant No. 6 has sought to subversively frustrate the effect of the DB Order through the present application. Moreover, it is alleged that, pursuant to this Court's order dated 21st February, 2024, Defendant No. 6 has intensified their infringing actions by misrepresenting the effect of the said order to third parties to sanction the release of his songs on various social media platforms. Such actions clearly indicate *mala fide* intent on the part of Defendant No. 6 in filing the present application.

6.3. Without prejudice to the objections raised to the maintainability of the present application, it is submitted that the Plaintiff's actions do not amount to any disobedience of the DB Order. Defendant No. 6 has failed to adequately demonstrate that the songs which have been taken down pursuant to the Plaintiff's notices were not related to the Agreement between the parties and not covered by the DB Order. Once the Vacating Order had been set aside, the injunction granted *vide* the DB Order would cover all songs specifically mentioned in the suit and appeal, as well as those in breach of the Agreement. Thus, the release of such songs, including on other third-party platforms,

¹³ (1961) 1 SCR 728

¹⁴ 2003 SCC OnLine Del 755



would be contrary to the terms of the DB Order. This submission is bolstered by the reasoning of the Supreme Court in *Sita Ram v. Balbir*¹⁵.

6.4. Defendant No. 6 has failed to establish that the recipients of the Plaintiff's legal notices took down the Defendant's videos solely on the basis of the Plaintiff's invocation of the Ex-Parte Order. The notices issued by the Plaintiff were sent to established entities in the music industry, having access to competent legal advice. Further, the notices were sent *bona fide* in order to enforce the DB Order, with complete disclosure of the procedural history of the present case. In fact, the Ex-Parte Order, Vacating Order and DB Order were all enclosed with such communications. Hence, the taking down of content cannot be assumed to have been done for any reason other than the fact that such recipients, many of whom are direct competitors of the Plaintiff with no occasion to unthinkingly act on their instructions, had correctly accepted that the said songs were violative of the DB Order. Be that as it may, in terms of the directions issued on 21st February, 2024, clarificatory communications have been sent to such entities by the Plaintiff, and a compliance affidavit to that effect has been filed. Thus, the grievance of Defendant No. 6 urged in the present application stands resolved.

6.5. The Plaintiff's invocation of the Ex-Parte Order in their legal notices was on account of a *bona fide* mistake. However, this error on their part cannot form the basis of issuing a blanket restraint against the Plaintiff from issuing further legal notices to seek enforcement of the DB Order, as such a direction would interfere with the Plaintiff's legal and constitutional rights. The Plaintiff is entitled to issue notices highlighting the Court's orders and expressing their opinion that certain songs are in violation thereof. While

¹⁵ (2017) 2 SCC 456



recipients of such notices are free to disagree, in which case the Plaintiff can opt to take legal recourse as available to them, however, to require the Plaintiff to approach the Court at the first instance would be an unreasonable restraint, ultimately resulting in third parties being dragged into contempt proceedings without affording them an opportunity to first comply with the DB Order.

6.6. No case is made out for civil or criminal contempt against the Plaintiff. As noted above, there is no disobedience of any judgment, decree, direction, order, writ or other process of a court, or wilful breach of any undertaking given to the Court. Thus, Plaintiff cannot be held liable for civil contempt, as defined under Section 2(1)(b) of the CC Act. Furthermore, neither is there any case made out to warrant imposition of criminal contempt as defined under Section 2(1)(c) of the CC Act, nor have the stringent procedural pre-requisites for initiating such an action been fulfilled. These contentions are founded on the observations rendered in *Kanwar Singh Saini v. High Court of Delhi*¹⁶, *L.P. Misra (Dr.) v. State of U.P.*¹⁷, *Pallav Sheth v. Custodian*¹⁸, *Bal Thackrey v. Harish Pimpalkhute*¹⁹, and *Biman Basu v. Kallol Guha Thakurta & Anr.*²⁰.

6.7. It is further argued that while the Defendant No. 6 has pressed for the invocation of Section 151 of CPC by the Court to overcome the fact that the present application is not maintainable, this contention is not tenable. The said provision can only be applied in the event that there is no alternate remedy available in accordance with the existing provisions of law and cannot be

¹⁶ (2012) 4 SCC 307

¹⁷ (1998) 7 SCC 379

¹⁸ (2001) 7 SCC 549

¹⁹ (2005) 1 SCC 254

²⁰ (2010) 8 SCC 673



invoked to override statutory provisions or create remedies which are not contemplated under the CPC. In the present case, the Defendant No. 6 has ample remedies that may be availed in order to seek redressal of their grievance, and thus there is no occasion to specifically rely on Section 151 of CPC to hold the Plaintiff liable for contempt. This settled position of law is elaborated in *My Palace Mutually Aided Co-operative Society v. B. Mahesh & Ors.*²¹.

6.8. The judgments relied upon by the Defendant are all capable of being distinguished from the facts and circumstances which are before the Court in the present case.

6.9. No case is made out for contempt on the part of the Plaintiff. In any case, since clarificatory communications have already been sent out by the Plaintiff, the harm, if any, caused by the Plaintiff's mistaken invocation of the Ex-Parte Order has been remedied. Thus, the present application deserved to be dismissed.

Analysis and Findings

7. Order XXXIX of the CPC deals with temporary injunctions and interlocutory orders. Rule 2A of Order XXXIX specifically addresses the consequences of disobedience or breach of an injunction. The relevant provision reads as under:

“ORDER XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS

Temporary injunctions

...xxx... ...xxx... ...xxx...

2A. Consequence of disobedience or breach of injunction.—

²¹ 2022 SCC OnLine SC 1063



(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.”

8. A plain reading of this provision indicates that the Court has the authority to take punitive measures against a party that disobeys an injunction or breaches the terms of such an order. However, it is crucial to note that this provision is not party-specific, meaning thereby that if the Court issues an order that operates equally on both parties such as maintaining the *status quo*, or to third parties, either party can potentially invoke contempt proceedings against the other if there is a breach of the order. This is because such an order applies reciprocally, and both parties are under an obligation to comply with it. Thus, in such situations where the order affects both parties (plaintiff and defendant), any breach by either party, or of a third party specifically directed, can be grounds for contempt, if it can be shown that the breaching party was aware of the order and had the capacity to comply with it. Consequently, the mere fact that the present application has been filed by Defendant No. 6 invoking Order XXXIX Rule 2A would not render the same not maintainable.

9. Be that as it may, the main purpose behind Order XXXIX Rule 2A vesting the Court with power of attachment of property or detention of a person in civil prison in cases of disobedience, extends beyond mere enforcement of court orders. When a party disobeys a court order, the Court's



ability to function effectively and uphold the rule of law is challenged. Contempt powers act as a deterrent against non-compliance, ensuring that court decisions and directions are respected and implemented. Contempt powers also help in maintaining the authority and dignity of the judiciary. Courts must be seen as institutions where laws are applied consistently and fairly, and whose orders are followed. By penalizing disobedience, the Court reaffirms its authority and the respect it commands. Contempt powers are also essential for protecting the rights of parties involved in legal proceedings. For instance, if a Court orders one party to pay alimony or child support and the party fails to comply, attaching property or imprisonment can be necessary to safeguard the financial rights and well-being of the intended beneficiary of such an order. These powers also help expediting the legal process by encouraging timely compliance with directions and rulings, thereby avoiding prolonged litigation and additional court resources being spent on enforcement.

10. However, in cases of civil contempt under Order XXXIX Rule 2A, the action for contempt must be directed against the specific party who is subject to the court order or injunction. This rule is specifically designed to address non-compliance with the Court's interim orders for enforcement of the rights of parties, as determined by the Court. Order XXXIX Rule 2A of CPC only applies in case of disobedience or breach of the injunction order, or terms on which such an order is granted. Thus, it can only be invoked by a party in whose favour an injunction order has been granted under Order XXXIX Rules 1 and 2 of the CPC, and against a party enjoined by operation of the said order. In the instant case, the DB Order, passed under Order XXXIX Rules 1 & 2 of CPC, restrained Defendant No. 6 from engaging with third



parties for monetizing new songs until September 2025. However, there are no directions issued by the Division Bench that can be interpreted to operate as a restraint on the Plaintiff. As pointed out by Mr. Dave, the only terms imposed on the Plaintiff pertain to making a monetary deposit in Court, which has been duly complied with. In absence of such an injunction or order under Rules 1 or 2 against the Plaintiff, there is no possibility of any disobedience—wilful or otherwise. Hence, there is no basis for Defendant No. 6 to claim that the Plaintiff has violated the directions issued in the DB Order. We must nevertheless observe that the Court, on a *prima facie* assessment, initially found the Plaintiff's conduct to be contumacious, however, upon a detailed examination of the facts and applicable law, the Court finds merit in the contention of the Plaintiff that the instant application is not maintainable under Order XXXIX Rule 2A of CPC.

11. That said, the Court agrees with Mr. Sethi to the extent that the Plaintiff's invocation of the Ex-Parte Order in their legal notices cannot be termed as a *bona fide* mistake as sought to be canvassed by the Plaintiff. The explanation offered to justify their conduct is not convincing, especially considering that the notices do not merely inadvertently invoke the Ex-Parte Order, but rather, categorically state that "*the Restraining Order 1 applied with full force and effect*". The Court must acknowledge that the Plaintiff company, with the guidance of expert legal counsel and its operation within the music industry, is thoroughly acquainted with the legal intricacies and copyright issues involved. In such circumstances, the legal notices issued by them bear an element of deliberate miscommunication, likely intended to enforce their interests more aggressively, which casts a shadow on the Plaintiff's *bona fides*. The Plaintiff's rationale for misinterpreting the Court's



directions lacks substance and fails to persuade. Given the circumstances, the Plaintiff's actions constitute a deviation from proper legal conduct. Nevertheless, this impropriety does not satisfy the stringent criteria necessary to initiate contempt proceedings under Order XXXIX Rule 2A. Contempt of court, especially in cases of civil contempt, hinges on the wilful defiance of a court order. The DB Order does not impose any injunction or specific direction on the Plaintiff that could be construed as having been wilfully disobeyed. Thus, the procedural requirement for establishing civil contempt has not been satisfied, and Order XXXIX Rule 2A, having a very specific jurisdiction, cannot be invoked to correct this wrong.

12. We now turn to the provisions under the CC Act to examine whether the present case attracts any action under the said statute. The CC Act defines "civil contempt" as "*wilful disobedience to any judgment, decree, direction, order, writ, or other processes of a court or wilful breach of an undertaking given to a court*". In the present case, no judgment, decree, direction, order, writ, or other process of the court has been issued against the Plaintiff. Furthermore, there has been no undertaking given to the Court by the Plaintiff that has been breached. The Supreme Court, in *Food Corporation of India (supra)*, emphasizes that the existence of a specific court order against a party is an essential prerequisite for civil contempt. In the absence of any such explicit direction from the Court that has been wilfully disobeyed, the essential criteria for invoking civil contempt are not satisfied in the present case.

13. On the other hand, "criminal contempt" under the CC Act includes any publication or act that scandalizes or tends to scandalize the authority of the court, prejudices or interferes with judicial proceedings, or obstructs the



administration of justice. The Court can initiate an action for criminal contempt on its own motion, or on a motion made by or with the consent in writing of the Advocate General of India. These conditions have clearly not been met in the present case. The procedure for initiating criminal contempt proceedings is stringent to safeguard against arbitrary action that could undermine the integrity of the judicial process. The requirement for consent from the Advocate General or initiation by the Court itself ensures that criminal contempt is reserved for serious breaches that genuinely obstruct the administration of justice. The principles laid out in *Bal Thackrey (supra)* indicate that criminal contempt actions should be reserved for acts that significantly threaten the judicial process, which is not evident in this case. There is no evidence to suggest that the Plaintiff's actions scandalized the court, prejudiced any judicial proceedings, or obstructed the administration of justice in any manner. The miscommunication did not undermine the authority of the court or interfere with its proceedings. Given these considerations, the Plaintiff's conduct, while possibly constituting a breach of ethical standards actionable under different legal principles, possibly inviting tortious action, does not constitute civil or criminal contempt of court as defined under the CC Act.

14. It is pertinent to note that the Plaintiff's actions, though initially erroneous, were corrected in good faith. The Plaintiff took prompt corrective measures, including issuing clarificatory notices and filing a compliance affidavit to that effect, demonstrating an effort to rectify the mistake. This proactive approach mitigates the gravity of their initial misstep, thus aligning with the Court's expectations and procedural integrity. These actions also conform with the principles laid down in *Food Corporation of India (supra)*,



where the Court emphasized the importance of corrective measures in mitigating the effects of procedural lapses. Thus, the Court has taken these corrective actions into account in determining the appropriateness of the present contempt proceedings. Furthermore, punitive measures in contempt cases should be reserved for instances of clear and wilful disobedience, which are not apparent in this case.

15. The judgments relied upon by the Defendant No. 6 are distinguishable from the facts and circumstances emerging in the present case. In *K.K. Velusamy (supra)* and *Vidur Impex (supra)*, the invocation of Section 151 of CPC was based on the unique specifics of those cases. These judgments explicitly state that Section 151 cannot be exercised if there is an applicable specific provision within the CPC. This principle is crucial as it prevents the misuse of inherent powers when explicit procedural rules are available and applicable. Furthermore, in neither *Antony Raod Transport (supra)* nor *All Bengal Excise Licensees' Association (supra)* was there any injunction operating against the party that had initiated the contempt proceedings. In both cases, the plea of misinterpretation of the Court's orders was rejected because the breach of the injunction was by the party against whom such an injunction was granted. This is a critical distinction because, in the present case, there is no injunction operating against the Plaintiff.

16. Considering the Plaintiff's initial communications, which were not only inappropriate but seemingly deliberately misleading, it is pertinent to consider whether the Court should exercise its inherent powers to address and rectify the misconduct observed in this case. At this juncture, it is essential to recognize the width and scope of the Court's inherent powers under Section 151 of CPC. This provision confers upon the Court the authority to act *ex*



debito justitiae—to uphold the demands of justice. This provision is often invoked to enable the Court to make orders necessary to meet the ends of justice or to prevent the abuse of its process. It serves as a reservoir of judicial power to ensure that the process of law is not subverted by procedural technicalities, i.e., inherent powers can be invoked to address situations where procedural law falls short in delivering substantive justice. Thus, the Court’s inherent powers would not be diminished by the procedural limitations of Order XXXIX Rule 2A. This understanding finds support in the Supreme Court’s observations in *K.K. Velusamy (supra)*, which highlights that the inherent powers of the Court are wide and are intended to prevent abuse of process or to meet the ends of justice. Further, as noted in *My Palace Mutually Aided Coop. Society (supra)*, Section 151 of CPC is designed to ensure that justice is served, and the process of law is upheld without being hindered by technicalities.

17. At the same time, the Court must exercise its inherent powers with caution and responsibility. The principles laid out in the aforementioned judgments underscore that the inherent powers under Section 151 CPC should be invoked sparingly and only when no specific provisions apply. Further, as emphasised in *Bal Thackrey (supra)*, the use of inherent powers must be judicious and not excessive, ensuring that justice is served without overstepping procedural boundaries. The Court must balance its inherent powers to correct any wrong committed with the necessity of allowing parties to themselves rectify their errors in good faith. Therefore, while the Court recognizes its inherent powers, yet it is not inclined to invoke the same since the Plaintiff has taken proactive steps to rectify their mistake. However, the Court emphasizes that moving forward, should the Plaintiff engage in the



enforcement of court orders through communications with third parties, they must ensure the accurate representation of the court's directions to avoid any potential misrepresentation. This condition is imposed to ensure that the Plaintiff's future actions are transparent and in strict compliance with judicial orders, thereby upholding the integrity of the judicial process.

Conclusion

18. In light of the above analysis, the application under Order XXXIX Rule 2A CPC is not maintainable as the injunction was issued against Defendant No.6, not the Plaintiff. Consequently, the restrictions imposed on the Plaintiff through order dated 21st February, 2024, specifically prohibiting direct communication with any party to enforce the Court's injunction order, are hereby recalled. The Plaintiff's actions, though questionable and arguably containing elements of deliberate miscommunication, were later corrected in good faith through their prompt issuance of clarificatory notices, which reflects a genuine effort to rectify the mistake. These corrective measures justify the closure of the contempt proceedings and do not call for the invocation of the Court's inherent powers under Section 151 of CPC for taking any punitive action against the Plaintiff, except for certain directions as follows:

18.1. The Plaintiff is directed to ensure that any future communications with third parties for the enforcement of court orders are clear and accurate, thereby eliminating any ambiguity or potential for misrepresentation.

18.2. Any enforcement notice issued by the Plaintiff must include a comprehensive summary of the relevant court orders, clearly delineating the scope and extent of the injunctions or directions.



19. With the foregoing directions, the present application is disposed of.

SANJEEV NARULA, J

MAY 24, 2024/dg