

ITEM NO.4

COURT NO.2

SECTION XII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).5727-5735/2011

(From the judgement and order dated 22/12/2010 in MP No. 1/2010 & MP No. 2/2010 & CMA No. 3293/2010 & CMA No. 3382/2010 & CMA No. 3383/2010 & CMA No. 3384/2010 & CMA No. 3385/2010 & CMA No. 3387/2010 & CMA No. 3388/2010 & CMA No. 3389/2010 & CMA No. 3390/2010 of The HIGH COURT OF MADRAS)

PHONOGRAPHIC PERFORMANCE LTD.ETC.ETC.

Petitioner(s)

VERSUS

ENTERTAINMENT NETWORK(INDIA)LTD.ETC.ETC.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned Judgment and permission to file synopsis and list of dates and with prayer for interim relief and office report ))

WITH SLP(C) NO. 1461-1462 of 2011

(With appln(s) for exemption from filing c/c of the impugned Judgment and with prayer for interim relief)

SLP(C) NO. 1782-1783 of 2011

SLP(C) NO. 1841-1842 of 2011

SLP(C) NO. 1888-1889 of 2011

[(With appln.(s) for permission to place addl.documents on record and with prayer for interim relief and office report)]

SLP(C) NO. 1543 of 2011

SLP(C) NO. 1702 of 2011

[(With appln.(s) for exemption from filing c/c of the impugned judgment and with prayer for interim relief and office report)]

Date: 05/04/2011 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Petitioner(s)

Mr. K.K. Venugopal, Sr. Adv.

Mr. Mukul Rohtagi, Sr. Adv.

Mr. C.A. Sundaram, Sr. Adv.

Mr. Jaideep Gupta, Sr. Adv.

Mr. Pragyan Pradip Sharma, Adv.  
 Mr. Shekhar Menon, Adv.  
 Mr. Gopal Shankar Narayan, Adv.  
 Mr. P.V. Yogeswaran, Adv.-on-record.

In SC 1461-62,  
 1782-83,1841-42  
 & 1888-89 all of  
 2011

Mr. Iqbal Chagla, Sr. Adv.  
 Ms. Prathiba M.Singh, Adv.  
 Mr. Naval Agarwal, Adv.  
 Mr. Gaurav Sharma, Adv.  
 Mr. Abhinav Mukerji, Adv.-on-record.  
 Mr. Deepak Gogia, Adv.  
 Mr. Kapil Wadhwa, Adv.

M/S. Karanjawala & Co.

For Respondent(s)

/R1 in  
 SC 5727-35/11

Mr. Iqbal Chagla, Sr. Adv.  
 Ms. Prathiba M.Singh, Adv.  
 Mr. Naval Agarwal, Adv.  
 Mr. Gaurav Sharma, Adv.  
 Mr. Abhinav Mukerji, Adv.-on-record.  
 Mr. Deepak Gogia, Adv.  
 Mr. Kapil Wadhwa, Adv.

In SC 5727-35/11

Mr. Dushayanta Dave, Sr. Adv.  
 Mr. K.Datta, Adv.  
 Mr. Diggaj Pathak, Adv.  
 Mr. Abhay Kumar, Adv.-on-record.

Dr. A.M. Singhvi, Sr. Adv.  
 Mrs. Meghnaq Mishra, Adv.  
 Mr. Akhil Sachar, Adv.  
 Mrs. Manik Karanjawala, Adv.  
 For M/S. Karanjawala & Co., Adv.

Mr. Sudhir Chandra, Sr. Adv.  
 Mr. Neil Hildreth, Adv.  
 Dr. Kishore Kunal, Adv.  
 Mr. Praveen Kumar, Adv.

Mr. Sridhar Potaraju, Adv.-on-record  
 Mr. Gaichang Gangmei, Adv.  
 Mr. Sreenu Garapati, Adv.

Mr. Arjun Harkauli, Adv.-on-record.

UPON hearing counsel the Court made the following  
 O R D E R

SLP(C)Nos.5727-5735 of 2011, have been

filed against the order dated 22<sup>nd</sup> December, 2010, passed by the Madras High Court in several miscellaneous petitions in CMA Nos.3293, 3382 to 3385, 3387 to 3390 all of 2010, rejecting the prayer made therein by the appellants for interim stay of the order passed by the Copyright Board, which is the subject-matter of challenge in the pending appeals.

2. Since we are mainly concerned with the refusal of the courts below to pass interim orders, during the pendency of the appeals, we shall briefly indicate the circumstances in which these Special Leave Petitions came to be filed and are being considered today.

3. It appears that in relation to various applications made under Section 31(1)(b) of the Copyright Act, 1957, for grant of licence for broadcasting and sound recording, the Copyright Board had by an order dated 19<sup>th</sup> November, 2002, determined the interim standard rate of royalty at the rate of Rs.1200/- per needle hour and certain other directions were also given. The said order resulted in overall payment of Rs.660/- per needle hour by way of royalty. The said order of the Copyright Board was questioned by both the parties in appeal and cross appeal before

the Bombay High Court, which by an order dated 13<sup>th</sup> April, 2004, set aside the order of the Copyright Board, allowed the appeal as well as the cross appeal in part, and remitted the matter to the Copyright Board for reconsideration and fixation of royalty payment in terms of Section 31 of the aforesaid Act.

4. The matter was carried to this Court in Civil Appeals Nos.5114, 5178-5180, 5181, 5182 and 5183, all of 2005. By judgment dated 16<sup>th</sup> May, 2008, this Court declined to lay down the principles regarding evaluation and upheld the order passed by the Bombay High Court in a similar matter, remitting the matter back to the Board for the said purpose.

5. However, this Court also indicated that it did not approve the manner in which the Board had dealt with the matter and accordingly set aside the order of the Board and once again remitted the matter to the Board for fresh consideration on merit. The appeals were allowed with the aforesaid directions.

6. Pursuant thereto, the Copyright Board took up various matters and after a detailed discussion and upon taking evidence, it indicated that though the Government in the second phase of its policy

had gone for a percentage of gross revenue, it preferred linkage with advertisement revenue over gross revenue. Accordingly, in exercise of the powers conferred on it under Section 31(1)(b) of the Copyright Act, 1957, the Board directed the Registrar of the Copyright Board to grant to the complainants separate licences for communicating the work recorded in sound recordings in the repertoire, present and future, of the respondent to the public by broadcast on revenue sharing basis, subject to certain conditions, including payment of 2% of the net advertisement earnings of each FM Radio station accruing from the radio business only for that radio station.

7. Having considered the submissions made on behalf of the respective parties, and taking into consideration the fact that the subject-matter of challenge in these Special Leave Petitions is an order passed by the High Court refusing to grant interim stay of the order of the Copyright Board and the subject-matter of the appeal pending before the High Court is the method to be adopted for assessing the compensation payable, we are of the view that no interference is called for at this stage in these Special Leave Petitions. This Court had on the earlier occasion set aside the

earlier fixation of compensation and the entire matter was at large before the Copyright Board. The relief sought for by the petitioners herein in the application for interim orders before the High Court was only for a stay of the order passed by the Copyright Board and not for any direction to pay compensation at any particular rate. In our view, expressing any opinion in the matter at this stage, would be improper on our part since the aforesaid question is pending decision in the High Court. At the same time, since the matter involves a large number of stake-holders, it will be in the interest of all concerned if the appeals are decided early by the Madras High Court. We, therefore, request the High Court to take up these pending appeals on an urgent basis and to ensure that the same are disposed of, if possible, within two months from the date of communication of a copy of this order.

8. We make it clear that while disposing of the appeals, the High Court should not be influenced by any of the observations made in the order impugned before us, since that was only for the purpose of disposing of the applications for stay which had been filed on behalf the appellants.

9. During hearing of the Special Leave Petitions, we were informed that Transfer Petitions had been filed by the respondents herein for transfer of the pending appeals before the Madras High Court to this Court, but that while admitting the Transfer Petitions, we had not granted any stay. Consequently, the pendency of the Transfer Petitions will not prevent the High Court from disposing of the pending appeals.

10. The Special Leave Petitions (SLP(C)Nos.5727-5735 of 2011) are disposed of.

11. The other Special Leave Petitions, which have also been listed today, be listed on 21st April, 2011.

(Sheetal Dhingra)  
Court Master

(Juginder Kaur)  
Court Master

JUDGMENT