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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve : 01.04.2011

Date of decision: 20.04.2011

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**IA NO. 4937/2010 IN CS (OS) 666/2006**

THE INDIAN PERFORMING RIGHT SOCIETY

... PLAINTIFF

Through : Mr. Ashwini Mata, Sr. Advocate with Mr. Mohit Lahoty, Advocate

Vs.

ENTERTAINMENT NETWORK (INDIA) LTD.

... DEFENDANT

Through : Mr. K. Datta with Mr. Diggaj Pathak, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not?  | YES |
| 3. | Whether the judgment should be reported in the Digest?                    | YES |

**MR. JUSTICE S.RAVINDRA BHAT**

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1. This order will dispose of a Review Petition seeking recall of the order dated 19.03.2010, whereby its application for amendment of the suit, being I.A. No. 3509/2010 was disposed of.
2. The plaintiff is a Society registered under Section 33(3) of the Copyrights Act, whose members are eminent authors, composers and publishers of Indian literary and musical works, and who have assigned their public performing rights/ broadcasting rights to the plaintiff. The plaintiff had claimed that the defendant company is engaged in broadcast and communicating to the public, literary, musical and other works had violated its copyrights by unauthorized

broadcast of its (the plaintiff's) repertoire without authorization or license and despite knowledge that such rights were that of the plaintiffs. The plaintiff claimed that the defendant had entered into contract in regard to broadcast of music in respect of 7 cities under an earlier FM Radio Policy Ph-I, of the Central Government. The plaintiff, at the time of filing the suit, had alleged that the defendant infringed its copyright by broadcasting musical works from three FM Radio Stations - Bangalore, Jaipur and Hyderabad.

3. In the application, IA 3509/2010, the plaintiff had alleged that during pendency of the suit, the defendant had obtained licenses to open and establish Radio stations in 22 cities, i.e. Patna, Jalandhar, Panaji, Bhopal, Vadodara, Rajkot, Kanpur, Nasik, Varanasi, Aurangabad, Lucknow etc. This Court, after considering the submissions, had rejected the application for amendment in the following terms:

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**I.A. No. 3509/2010**

*The Court has considered the averments in the application. The plaintiff proposes to amend the suit, submitting that as a consequence of change in the policy of Central Government, the defendant was permitted to set-up and operate more FM radio stations. Originally when the suit was filed, the Defendant was operating three radio stations. The plaintiff's claim is for permanent injunction. The suit seeks permanent injunction to restrain the defendant from playing or broadcasting any programmes which have contents in respect of which the plaintiff has exclusive sound-recording rights.*

*The Court is of the opinion that the application at best sets-out a subsequent cause of action, which, if permitted to be incorporated, would only enlarge the scope of the suit and further delay it. The parties have admitted/denied the documents. In the circumstances, the plaintiff's request is declined. It is further without prejudice to its rights to claim such relief as is permissible, in respect of the averments, spelling-out subsequent cause of action, if any.*

*I.A. No. 3509/2010 is disposed of in these terms.*

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4. It is argued that the order ought to be reviewed as it would cause extreme hardship in as much as multifarious litigation would have to be resorted to for adjudication of the very same disputes merely on account of the defendant having established radio stations that were not existent at the time when the suit was filed. It was submitted that this is an important consideration which the Court overlooked, as rejection of the request for amendment could

potentially lead to conflicting judgments which had to be avoided by adopting a liberal approach and permitting the amendments sought. In support of this submission, learned counsel had relied upon the judgment of the Supreme Court reported as *Reva Jeetu Builders and Developers v. Narayanaswami & Sons* 2009 (10) SCC 84; *Sampat Kumar v. Ayakannu & Anr.* 2002 (7) SCC 559; *B.K. Narayana Pillai v. Parameshwaran Pillai* 2001 (7) SCC 712.

5. It is next submitted that even if the Court commits an error or mistake of law, it can review the previous order as a corrective measure, and to secure ends of justice. Learned counsel argued that non-consideration of the binding judgments constitutes an error of law that can be cured, and review jurisdiction. In support of these submissions, the plaintiff relied upon the judgments reported as *Board of Control for Cricket and Anr. v. Netaji Cricket Club* 2005 (4) SCC 741; *Inder Chand Jain v. Motilal* 2009 (14) SCC 663 etc.

6. It is lastly argued that the establishment of new radio stations amounts to extension or continuation of an existing cause of action which can be brought within the framework of the existing pleadings in the plaintiff's suit, and that to avoid multifariousness and conflicting judgments, it would be in the ends of justice to review the previous order and permit the plaintiff to amend its suit.

7. The defendant argues that the submissions made in support of the review petition are on the merits as to the correctness or otherwise of the order rejecting the amendment application. It was emphasized that the Court would review its order if there is a mistake of fact or error apparent from the face of the record but not on the ground of overlooking a judgment or appreciation of a legal submission or principle. That would appropriately be the subject matter of an appeal and the Court cannot constitute itself as a second chamber of appeal over its previous order.

8. It is submitted that even though the plaintiff had sought to amend the suit by mentioning the setting-up of new radio stations, what has not been highlighted is that these radio stations were permitted by the competent authority considerably prior in point of time to the filing of the amendment application itself. In other words, the radio stations had been set-up were to the plaintiff's knowledge itself in 2007-08 despite which no steps to apply to the Court for amendment had been made. It is lastly argued that the view taken by the Court in its order - sought to be reviewed by the present application - is neither manifestly illegal nor unjust since

the events sought to be introduced in the pleadings by the plaintiff are subsequent to the filing of the suit, and if incorporated, would only prolong the litigation. It was argued that entertaining the review petition and granting favorable orders would mean that each time the alleged infringers' business activities expand, the plaintiffs would acquire the right to extend the scope of the litigation, which would mean that the concept of a time-bound resolution of disputes would have no sanctity.

9. In this case, the plaintiff had sued for permanent injunction and damages as well as on account of alleged infringement, by the defendant, of its copyrights in its repertoire. The plaintiff had alleged that on certain occasions, the defendants had broadcast musical works, the title to which were owned, or administered, by the plaintiff society. The plaintiff, no doubt, mentioned that the defendant had established three radio stations in the suit. On this basis, the suit claims for permanent injunction and damages were premised. It is a matter of record that the defendant, in the normal course of its business, having regard to the relevant criteria, was permitted and licensed to open 22 other FM broadcasting stations under the policies of the Central Government. The establishment of radio stations and the broadcast of songs or musical works alleged by the plaintiff to have been resorted to by the defendant from each of the new *locales* were events subsequent to which there was no background in the pleadings. At the time when the suit was filed, the plaintiff could not have visualized that the defendant would extend its activities to such an extent.

10. While the plaintiff may, to an extent, legitimately assert that permitting the amendments could potentially eliminate multifarious litigation, at the same time, what cannot be lost sight is that the amendment as framed did not claim any additional relief by way of damages, on account of establishment of the new radio stations or the alleged infringement by the defendant on that score. Having regard to these factors, the Court was of the opinion that these subsequent events afforded a fresh cause of action to the plaintiff, incorporation of which would cause hardship to the defendant in as much as the existing suit would necessarily prolong resolution. The Court does not discern anything contrary to law or manifestly erroneous from the face of the record so as to compel it to exercise review jurisdiction. It is trite law that while exercising its powers under Section 114 read with Order 47 Rule 1 CPC, the Court's jurisdiction is narrow and confined. Re-appreciation of new points of arguments or questions of law are excluded from the

scrutiny of the Court in valid exercise of review jurisdiction.

11. For the above reasons, this Court is of the opinion that no review of the previous order is called for. The application, being IA No. 4937/2010 has to fail and is accordingly dismissed.

**CS (OS) 666/2006 AND 4509/2006 & 4558/2006**

12. The suit and the applications shall be listed for further proceedings before the Regular Bench, as per roster allocation on 06.05.2011.

APRIL 20, 2011

**(S.RAVINDRA BHAT)**

**JUDGE**