

Sholay Media and Entertainment Pvt. Ltd. and Anr. v. Vodafone Essar Mobile Services Ltd. and Ors.

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(Delhi High Court, 09.05.2011)

FACTS:

Plaintiff No. 1 i.e. Sholay Media and Entertainment Pvt. Ltd. acquired all rights in the film "Sholay" in the year 2000 and was exploiting these rights in various areas such as ringtones, caller tunes etc. Certain rights in the film were assigned to Polydor of India by an assignment deed of 1978. The rights assigned to Polydor of India were acquired by Defendant No. 3 i.e. M/s Universal Music India Pvt. Ltd. The Plaintiffs alleged that Vodafone Essar Mobile Services Ltd. and Vodafone Essar Ltd. (Defendants No. 1 & 2 respectively, collectively referred to as "Vodafone") were commercially exploiting the copyright work of the film by offering value added products in the form of ringtones, truetones etc. created from the soundtrack of the film on mobile and digital platforms without any license or permission from the Plaintiffs. The Plaintiffs sought an injunction against infringement of their copyright in the film Sholay by Vodafone.

ISSUE:

The issue arose before the court as to the extent of the rights assigned by the plaintiffs' predecessors to Polydor of India by the Assignment Deed of 1978.

RULE:

Section 18 of the Copyright Act, 1957 empowers the owner of the copyright in any work to assign the copyright to any person either wholly or partially. It also provides that the assignee of a copyright becomes the owner of the copyright so assigned. The rights which are not assigned are owned by the owner of copyright.

The Supreme Court in *Ajendraprasadji Narendraprasadji Pandey vs. Swamy K. Narayandasji and Ors.* [(2005) 10 SCC 11] has held that three factors need to be considered before granting an injunction:

- a) Prima facie case
- b) Balance of convenience
- c) Irreparable loss

HELD:

The Court refused to grant the injunction and allowed Vodafone to use the ringtones subject to certain conditions.

CASE ANALYSIS :

As the Plaintiffs were accepting royalty from Universal Music India Pvt. Ltd. in respect of digital media without protest, no prima facie case could be made out for grant of injunction. Vodafone had been using sound recordings of Sholay and did not dispute the Plaintiffs' right to get royalty for the same. Thus, the Court held that the balance of convenience would lie in allowing Vodafone to continue selling ringtones, truetones etc., while simultaneously safeguarding the financial interests of the Plaintiffs.

Certain conditions were laid down to safeguard the financial interests of Plaintiffs. These were:

1. Universal Music India Pvt. Ltd. would continue to pay royalty, including royalty for use by Vodafone, to the Plaintiffs as per Assignment Deed of 1978.
2. The Defendants would deposit the difference between the royalty paid to the Plaintiffs as per clause (1) above and the royalty calculated at the rate of 25% of the receipts of Vodafone from use of the sound-recording of Sholay.
3. Universal Music India Pvt. Ltd. and Phonographic Performance Pvt. Ltd. (Defendant No. 4) could allow other persons to use sound track of Sholay on digital/mobile platforms only as per conditions given above.

The Court did not consider the question of irreparable loss for grant of injunction.

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