IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL IP SUIT NO. 264 OF 2022

Novex Communications Pvt Ltd. …Plaintiffs

Versus

Trade Wings Hotesl Limited …Defendant

WITH

COMMERCIAL IP SUIT NO. 304 OF 2018

WITH

COMMERCIAL IP SUIT (ST) NO. 3544 OF 2023

WITH

COMMERCIAL IP SUIT NO. 278 OF 2018

WITH

COMMERCIAL IP SUIT NO. 281 OF 2018

WITH

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

INTERIM APPLICATION(ST) NO. 5417 OF 2021

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 267 OF 2022

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

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WITH

INTERIM APPLICATION(ST) NO. 5992 OF 2023

IN

COMMERCIAL IP SUIT (ST) NO. 5500 OF 2023

WITH

INTERIM APPLICATION(ST) NO. 21044 OF 2021

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUITS(ST) NO. 39541 OF 2022

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

Mr. Darius Khambata, Sr. Adv, a/w Mr. Rashmin Khandekar, Apurva Manwani a/w Mr. Ali Antulay a/w Mr. H. N. Thakore, Mr.Kunal Parekh Ms. Nirali Atha i/b Dua Associates for Plaintiff in COMIP/264/2022 and Applicant in IA(L)/5368/2021.

Abhiraj Parab a/w Pooja Mishra, Anjali M. for Defendant No. 8 in COMIP/345/2019

Adv. Mr. Hiren Kamod Adv.Mr. Prem Khullar, Adv. Rahul Punjabi, Adv. Anees Patel for Defendant in IA(L)/5992/2023 in COMIP(L)/5500/2023

Mr. Sameer Pandit a/w Ms. Sarrah Khambati Mr Mihir Govande i/b

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Wadia Ghandy & Co. For Plaintiff in NMCD/577/2018 & NMCD/721/2018 IN COMIP/304/2018

Mr. Sameer Pandit a/w Ms. Sarrah Khambati Mr Mihir Govande i/b Wadia Ghandy & Co. For Defendant in NMCD/725/2019 & NMCD/1388/2018 IN COMIP/363/2019 AND NMCD/525/2018 & NMCD/664/2018 IN COMIP/281/2018

Dr. Virendra Tulzapurkar Sr. Adv. Mr. Ramesh Soni a/w Mr. Sameer Pandit, Ms. Sarrah Khambati, Mr. Mihir Govande i/b Wadia Ghandy & Co. For Defendant No. 1 in IA/2102/2023 IN COMIP/157/2023 & NMCD/523/2018 & IA/1533/2020 IN COMIP/278/2018

Mr. Durgaprasad Poojari i/b PDS Legal, for Plaintiff in COMIP/278/2018

Mr. Rashmin Khandekar a/w Mr. H. N. Thakore a/w Mr. Kunal Parekh Ms. Nirali Atha i/b Dua Associates for Plaintiff in IA(L)/5417/2021, COMIP/332/2021.

Mr. Rashmin Khandekar a/w Mr. H. N. Thakore, Mr. Kunal Parekh Ms. Nirali Atha i/b Dua Associates for Plaintiff in IAL/5880/2021 IN COMIP/267/2022

Mr. Rashmin Khandekar, a/w Mr. H. N. Thakore, Mr. Kunal Parekh Ms. Nirali Atha i/b Dua Associates for Plaintiff in IAL/5992/2023 IN COMIP(L)/5500/2023

Mr. Rashmin Khandekar, Ms. Apurva Manvani a/w Mr. H. N. Thakore,

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Mr. Kunal Parekh Ms. Nirali Atha i/b Anil T Agarwal for Plaintiff in COMIP(L)/3544/2023

COMMERCIAL IP SUIT NO. 363 OF 2019

Phonographic Performance Ltd …Plaintiff

Versus

Bunglow - 9 And 99 Ors …Defendants

WITH

COMMERCIAL IP SUIT (ST) NO. 3997 OF 2023

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

INTERIM APPLICATION(ST) NO. 4038 OF 2023

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT SUITS NO. 114 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 221 OF 2021

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

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WITH

COMMERCIAL IP SUIT NO. 938 OF 2018

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 914 OF 2018

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 966 OF 2018

IN

COMMERCIAL IP SUITS NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 1051 OF 2018

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 922 OF 2018

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 126 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 123 OF 2019

IN

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COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 119 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 116 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 120 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 122 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 117 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 115 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 127 OF 2019

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IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 121 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 118 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 358 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 345 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 359 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 291 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

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COMMERCIAL IP SUIT NO. 290 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 347 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 350 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 343 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 303 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 304 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 292 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

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WITH

COMMERCIAL IP SUIT NO. 145 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 306 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 319 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 321 OF 2019

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT (ST) NO. 35265 OF 2022

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 40 OF 2023

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 157 OF 2023

IN

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COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 156 OF 2023

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 147 OF 2023

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT (ST) NO. 37130 OF 2022

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT (ST) NO. 37136 OF 2022

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 148 OF 2023

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT (ST) NO. 37964 OF 2022

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 155 OF 2023

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IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 235 OF 2023

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

WITH

COMMERCIAL IP SUIT NO. 154 OF 2023

IN

COMMERCIAL IP SUIT NO. 332 OF 2021

Mr. Ravi Kadam Sr. Advocate, Mr. Amogh Singh, Asmant Nimbalkar, Neeraj Nawar, Shivani Rane, Apurva Manwani i/b Mr. D P Singh For Plaintiff in COMIP/363/2019 for Plaintiff.

Counsel Hiren Kamod, Prem a/w Ms. Madhu Gadodia, Deepak Deshmukh, Suyog Mukherjee, T Kulkarni i/b Naik & Co. for Defendant in COMIP (L) No. 37964/2022

Mr. Amit Jamsandekar a/w Mahua Roy Chowdhury, Akshay Kapadia, Jahnavi Singh, Angel Mary Aju i/b Royzz & Co. For Defendant No.1 in COMIP/221/2021, IA(L)/2633/2021

Huzefa Nasikwala a/w Idris M B i/b Nasikwala Law Office for Defendant No.3 in COMIP/117/2019 with NMCD/331/2018.

Huzefa Nasikwala a/w Idris M B i/b Nasikwala Law Office for

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Defendant No.2 in COMIP/966/2018 with NMCD/1741/2018.

Huzefa Nasikwala a/w Idris M B i/b Nasikwala Law Office for Defendant No.3 in COMIP/1051/2018 with NMCD/1793/2018.

Mr. Sameer Pandit a/w Ms. Sarrah Khambati Mr Mihir Govande i/b Wadia Ghandy & Co. For Plaintiff in NMCD/577/2018 & NMCD/721/2018 IN COMIP/304/2018.

Mr. Sameer Pandit a/w Ms. Sarrah Khambati Mr Mihir Govande i/b Wadia Ghandy & Co. For Defendant in NMCD/725/2019 & NMCD/1388/2018 IN COMIP/363/2019 AND NMCD/525/2018 & NMCD/664/2018 IN COMIP/281/2018.

Dr. Virendra Tulzapurkar Sr. Adv. Mr. Ramesh Soni a/w Mr. Sameer Pandit, Ms. Sarrah Khambati, Mr. Mihir Govande i/b Wadia Ghandy & Co. For Defendant No. 1 in IA/2102/2023 IN COMIP/157/2023 & NMCD/523/2018 & IA/1533/2020 IN COMIP/278/2018.

Mr. Prasad Shenoy a/w Abhishek Salian i/b Vidhi Partners.

Mr. Prasad Shenoy a/w Karishma Rao i/b vidhi Partners COMM. S/148/2023.

Mr. Amogh Singh, Apurva Manwani, Asmant Nimbalkar, Neeraj Nawar, Shivani Rane, i/b Mr. D P Singh for Applicant/Paintiff in COMIP/221/2021.

Mr. Ashish Kamat Senior Advocate, Mr. Amogh Singh, Asmant

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Nimbalkar, Neeraj Nawar, Shivani Rane, Apurva Manwani i/b. Mr. D P Singh for Applicant/Plaintiff in COMIP/1051/2018

Mr. Amogh Singh, Asmant Nimbalkar, Neeraj Nawar, Shivani Rane i/b Mr. D P Singh for Applicant/Plaintiff in all Matters.

Adv. Jainil Vashi i/b M P Vashi & Associates for Respondent in MNCD/332/2019 IN COMIP/116/2019

Adv. Ayush Chaddha for Plaintiff.

CORAM : R.I. CHAGLA, J.

RESERVED ON : 10TH NOVEMBER 2023.
PRONOUNCED ON: 24TH JANUARY 2024.

JUDGMENT : (PER R.I. CHAGLA, J)

1. In the above suits Novex Communications Pvt. Ltd and Phonographic Performance Ltd. (for short "Novex and PPL") respectively are the Plaintiffs. Identical relief has been sought in the above suits namely a perpetual injunction restraining the Defendant from publicly performing or in any manner communicating the sound recordings of the songs assigned and authorized to PPL and Novex respectively without obtaining licences from PPL and Novex.

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2. A preliminary issue has been raised by the Defendants in the above suits namely that Novex and PPL cannot carry on the business of issuing licenses without being registered as a Copyright Society under Section 33(1) of the Copyright Act, 1957 ("**the Act**") and thus, the Suit as filed will not entitle PPL and Novex to any kind of relief.

3. Thus the issue which falls for determination prior to going into merits of each of the above suits, is whether PPL and Novex in the above suits are entitled to seek reliefs as sought for in the plaint without being registered as a Copyright Society under Section 33 (1) of the Act.

4. Mr. Darius Khambata, learned Senior Counsel has made submissions on behalf of Novex which are supported by the Counsel whose appearances have been mentioned above. Whereas Mr. Ravi Kadam, learned Senior Counsel for PPL has made submissions on behalf of the PPL supported by the Counsel whose appearances are referred above.

5. Mr. Darius Khambata, has made submissions with regard to the scheme of the Copyright Act, which is divided into various chapters and each chapter deals with a different topic. He has referred to the meaning of the term "Copyright" and the rights associated with it covered in Chapter III of the Act, under Section 14. This defines a copyright to mean the **exclusive** right to reproduce a literary, dramatic or musical work in any material form including storing by electronic

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means, to make copies of such a work to perform it in public and in the case of a sound recording it includes the right to sell or give on commercial rentals or to communicate the sound recording to the public. He has submitted that the rights of the owner of copyright and its associate rights are covered in Chapter IV of the Act. Ownership of the copyright can be acquired in 4 broad ways. These are as under:-

i) By the author himself, being the first owner under Section 17;

ii) Situations in which the author creates a work in the course of his employment etc. for the benefit or on behalf of someone else, also under Section 17;

iii) Through an assignment under Sections 18 and 19 and

iv) Through testamentary disposition under Section 20.

6. Mr. Khambata has submitted that the aforementioned categories confer **full and absolute ownership** on the author/owner/assignee, as the case may be. Thus, the owner of the copyright could be an ***assignee***. All the incidents of rights that are available to an owner are also available to an assignee. The rights are not higher or lower merely by virtue of the ownership rights being acquired through assignment. The Defendants termed the Plaintiffs as "Aggregators" whatever their characterization, in law, the Plaintiffs are as much owner as any other form of owner.

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7. Mr. Khambata has referred to Section 18(2) of the Act wherein it is provided that ***the assignee shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act*** shall have effect accordingly.

8. Mr. Khambata has also referred to Section 18 (1) of the Act which specifically recognizes the owner's right to assign his copyright either wholly **or partially,** to any person.

9. Mr. Khambata has referred to the Right of an owner of copyright to license its work under Chapter VI of the Act. Under section 30 of the Chapter VI of the Act the *Licences by owners of copyright have been provided. The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in* ***writing by him or by his duly authorised agent****:*

10. Mr. Khambata has submitted that Section 30 of the Act is the source, which gives an "**owner**" of a copyright the power to grant any interest in the copyright by license. Section 30 applies to an "**owner**". An "**owner**" as is clear from Section 18(2) and as mentioned above includes an "**assignee**". Further, Section 30 also specifically empowers "**duly authorized agent**" of the owner, to grant license. He has referred to Section 30 (A) of the Act and has submitted that this makes it very clear that the provisions of Section 30 apply to licensing in the same way as the provisions of Section 19 apply to an assignment. Therefore, the Act allows an "**owner**" to grant a license directly or through an agent under Section 30 and then sets out the

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procedure for licensing by specifying that what applies to assignment would apply to licensing as well.

11. Mr. Khambata has referred to Sections 31, 31(A) to 31(D) of the Act which give a whole scheme of regulations for granting licenses compulsorily to the public. These sections fetter the right of the owner in the matter of grant of licences. He has submitted that the scheme of these sections contemplates notice to be issued to the **"owner"** to **secure such licences thereby recognizing the primacy of the "owner's right to licence".** The term owner is used in these sections **not** a "registered copyright society". These Sections of the Act envisage that it is the "**owner**" of the Copyright who is entitled to grant licenses for consideration and if he charges an exorbitant consideration, there is a remedy provided in the Act itself. It is the **"owner"** who is also entitled to be heard and to be paid.

12. Mr. Khambata has submitted that such a scheme provided under the Act would have been totally unnecessary if the Defendants were correct in their contention that it was only a "registered copyright society" which could carry on such business of issuing or granting licences. Accepting the Defendant's submission as pleaded and argued would amount to **rendering this scheme meaningless.**

13. Mr. Khambata, thereafter, referred to the Scope and object of the 1994 Amendment. By the 1994 Amendment a new chapter – Chapter VII was introduced, which deals with 'copyright society'. He has submitted that the object of 1994 Amendment was to promote the Collective administration of rights through a Copyright Society, both

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for the benefit of the owner as well as general public. The copyright societies, on an **"authorization"** from the owners could administer rights that were either licensed and/or assigned to them. As such, a Copyright Society fundamentally operated to administer rights in respect of works that belong to **"others".** He has submitted that by its very nature therefore, a copyright society may wear two hats i.e. (i) an authorized agent and (ii) an assignee. It administers the rights of "owners" by operating as an agent. He has submitted that reading of Clause 11 of the Notes on Clauses together with Sections 33 to 36 which have been introduced by 1994 Amendment Act was was merely to provide for registration and to regulate functioning of copyright societies. The amendments so introduced did not in any manner affect and/or circumscribe the rights of an owner to conduct its own affairs including granting of licenses by such owner. The "sea change" as sought to be contended by the Defendants is absolutely not evident from the 1994 Amendment or Notes on Clauses in this regard.

14. Mr. Khambata has submitted that it is necessary to refer in this context to Section 33 of Chapter VII of the Act, which is reproduced as under:-

> Section 33 of the Act provides as follows;
>
> *"33. Registration of Copyright society.— (1) No person or association of persons shall, after coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) commence or, carry on the business of issuing or granting licences in respect of any work in which*

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copyright subsists or in respect of any other rights conferred by this Act except under or in accordance with the registration granted under sub-section (3):

Provided that an owner of copyright shall, in his individual capacity, continue to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society:

Provided further that the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under this Act:

Provided also that a performing rights society functioning in accordance with the provisions of section 33 on the date immediately before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994) shall be deemed to be a copyright society for the purposes of this Chapter and every such society shall get itself registered within a period of one year from the date of commencement of the Copyright (Amendment) Act, 1994.

(2) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar of Copyrights who shall submit the

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application to the Central Government.

(3) The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed:

Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works.

(3A)…

(4)…

(5)…

15. Mr. Khambata has submitted that the heading of Section 34 is clear that it deals with *'Administration of rights of an owner by a copyright society'*. Thus, it it is somebody else's rights which are being administered and that owner can be an author, employer, proprietor, an assignee or someone who inherits it. Therefore, the copyright society is acting in a capacity similar to a manager/agent while administering the rights of the owner.

16. Mr. Khambata has referred to Section 34(1)(a) which deals with the manner in which a copyright society would obtain

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authorization for administration which clearly conveys the intention to include both, the **author** and **other owners** of right which would include an 'assignee'. Further, Section 34(1)(b) of the Act contemplates that an author or other owner will have the right to **withdraw authorization** given to the copyright society. This shows that an author or other owner does not have to carry out the business of licensing his works only through a copyright society. Since, once an owner withdraws its authorization from a copyright society, the owner can independently exercise his rights as he deems appropriate. It could never have been the intention of the legislature that once an author withdraws the authorization from a copyright society then that work cannot be licensed by anyone especially an owner. Such an interpretation would undermine the public interest in making available the copyrighted work to members of the public. In any event the provisions of Section 31, 31A-D would continue to operate to bind all **owners** to grant compulsory and statutory licenses even after withdrawal of authorization under Section 34(1)(b).

17. Mr. Khambata has submitted that Section 34(3) of the Act clarifies that a copyright society is licensing the works of an "**owner**" under section 30. This means that a copyright society is licensing the works of the "**owner**" as a duly authorized agent under Section 30. Therefore, this is not a new right created in favour of a copyright society independent of the owner or independent of it being a duly authorized agent.

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18. Mr. Khambata has then referred to Section 35 (1) of the Act, wherein it is provided that *"Every copyright society shall be subject to the collective control of the owners of rights under this Act* ***whose rights it administers …"***

19. Thus, both Sections 34 and 35 draw a clear distinction between the author/ owner of the right on the one hand and the administrator of that right on the other (i.e. the copyright society) as such has been drawn.

20. Mr. Khambata has referred to the decision of the Supreme Court in the ***"Entertainment Network India Ltd. v. Super Cassette Industries Ltd".***[1] He has submitted that the Supreme Court has held that Chapter VII was incorporated into the Act so as to enable an author to commercially exploit his intellectual property through a Copyright Society. A Copyright Society steps into the shoes of the author, it issues licenses on behalf of the author and files litigation on his behalf. The Supreme Court goes on to hold that as per Section 34 of the Act, a Copyright Society is a virtual agent authorized to act on behalf of the owner. Therefore, Chapter VII does not take away the rights of the author/ owner, it only gives a choice to the author/ owner to either exploit its copyright on its own or to exploit its copyright through a Copyright Society. The idea of a Copyright Society is to assist the owner and not take away rights from an owner.

21. The Supreme Court has concluded that Section 34 of the Act provides for administration of rights of owners by a copyright

1 (2008) 13 SCC 30 Para 66

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society for all intent and purport **creates a virtual agency so as to enable the society to act on behalf of the owner**...(emphasis supplied).

22. Mr. Khambata has referred to the decision of the The Delhi High Court in the case of ***Phonographic Performance Ltd. vs Lizard Lounge & Ors.***[2] The Delhi High Court whilst discussing the role of Copyright Society and the rights that such Copyright Society can exercise observed that the author being the first owner of the Copyright under section 17 can certainly appoint an agent (Copyright Society) to institute legal proceedings. The Delhi High Court held that :-

> *"24....The Copyright Society may not have exclusive rights inasmuch as* ***the owner continues to simultaneously have rights to deal with his Copyright*** *in the work...*
>
> *25.....**The Copyright Society is an agent appointed under the agreement by the owner of the Copyright** and specific powers have been conferred on the agent to institute legal proceedings. The said Act does not contain any provision prohibiting the institution of legal proceedings in derogation to the general law of agency. The author being the first owner of Copyright under Section 17 of the said Act can certainly appoint an agent to institute legal proceedings.*

2 (2009) ILR 2 Delhi 726 Para 24-27.

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> *27. …The creation of Copyright Society is to serve all the three objectives* ***without denuding the author of its own individual rights****"* (emphasis supplied)".

23. Mr. Khambata has referred to extract from Copinger and Skone James at Page 1540, wherein it is stated that the norm is that copyright licensing is done individually by the owners. It is only in situations where it becomes difficult or impossible for an owner to license his works individually that the need for Copyright Societies arises. The rationale for Copyright Societies is that it is the best means of **protecting owners rights**. Such Societies offer a facility to owners; they do not denude the owners of any of their rights.

24. Mr. Khambata has submitted that Owner's right under Section 30 cannot be curtailed by Section 33 (1) of the Act. He has submitted that Defendants have alleged that "no person" in Section 33(1) includes an "owner" of copyright and therefore even an owner of copyright cannot commence or carry on the business of granting copyright licenses. He has submitted that such an interpretation is *ex facie* incorrect because :

> i) If the interpretation as sought to be canvassed by the Defendant is accepted, then Section 33(1) **completely takes away the right granted by Section 30 of the Act**. In such a case, Section 33(1) would effectively emasculate Section 30;
>
> ii) Further, if Defendant's interpretation is accepted then a section in a chapter dealing with copyright

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> societies would completely subordinate and emasculate the right of an owner under Section 30, a section which falls in a different Chapter dealing with licensing. If Parliament had intended to take away any part of the owner's right under Section 30 (even by subjecting it to the compulsory agency of a registered copyright society) then an express amendment to Section 30 would have been essential.

25. Mr. Khambata has submitted that the decision of the Supreme Court in the case of "***K.M. Nanavati v. State of Bombay"***[3] recognizes the well settled rule of interpretation that two apparently conflicting provisions operating in two different fields should be reconciled, by restricting each to its own object or subject.

26. Mr. Khambata has then referred to the decision in the case of "***Leopold Café & Stores & Anr. Vs. Novex Communications Pvt. Ltd,***[4] wherein the Supreme Court has held that the prohibition as contemplated under Section 33(1) is on conducting business of licensing by a person in its own name for works in which 'others' hold Copyright.

27. Mr. Khambata has submitted that the word 'business' has no technical meaning but is to be read with reference to the object and context of the Act in which it occurs. The interpretation necessarily has to be "contextual". He has submitted that for this purpose it is

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3 AIR 1961 SC 112

4Order dated 17th July 2014 in NOM (L) No.1451 of 2014 in Suit (L) No.603 of 2014; 2014 SCC OnLine Bom 1324.

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necessary to note the heading of Section 33 which is "**Registration of copyright society**". He has submitted that the heading of a section can be used to interpret the object and purpose of a Section. It is well settled that the headings of sections are substantive parts of the act and limit or explain their operation. He has placed reliance upon the decision of the Supreme Court in "***K.M. Nanavati" (supra)*** which is the authority for this proposition. He has also referred to the heading of Section 34 of the Act which is "**Administration of rights of owner by copyright society**". He has submitted that Sections 33 and 34 of the Act must be read as respectively restricted to the subject described by these headings. Therefore, if a copyright society wants to do the business of issuing licenses, then it must do so as per the provisions of Section 33; this is all that the section contemplates. It cannot purport to curtail the owner's right to license given under Section 30 falling under Chapter VI of the Act.

28. Mr. Khambata has submitted that it is also well settled that a statute is required to be harmoniously construed so that each provision is given effect to without defeating and/or destroying another.

29. He has placed reliance upon the decision of the Supreme Court in "***Godavat Pan Masala Products I.P. Ltd. vs. Union of India"*** [5]**.** The Supreme Court has held as under:

> *"It is an accepted Canon of Construction of Statutes that a statute must be read as a whole and one*

5(2004) 7 SCC 68 Para 29.

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> *provision of the Act should be construed with reference to other provisions of the same act so as to make a consistent, harmonious enactment of the whole statute. The Court must ascertain the intention of the legislature by directing its attention not merely to the Clauses to be construed but to the Scheme of the entire statute. The attempt must be to eliminate conflict and to harmonize the different parts of the statute for.* ***It cannot be assumed that Parliament had given by one hand what it took away by the other.*** *(emphasis supplied).*
>
> The same principle has been enunciated by the Constitution bench of the Supreme Court in K.M. Nanavati's (Supra).

30. Mr. Khambata has submitted that applying these principles, the only interpretation and the way to look at the term 'business' that harmonizes Section 33 with the other sections in the Act would be to construe business as "**business of trading or granting licenses in respect of works which are not owned by such person**" as held by this Court in "Leopold Cafe" (Supra). The meaning of "business" has to be necessarily such that would not cause violence to other provisions of the Act including Sections 18, 19, 30 and 34.

31. Mr. Khambata has submitted that the Defendants have contended that "business" must be given the widest possible meaning and as such anything that is "business", including the grant of licenses

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by the owner is covered by Section 33 (1). He submitted that such a contention is completely **counterproductive** and in fact militates against the case of the Defendants. The wider the interpretation of the term "business", the greater the intrusion on the right available to the owner under Section 30. **If business is interpreted as put forth by the Defendants, then in that case, 99% of the ownership rights would be taken away and the only right left with the owners would be to license its rights for philanthropy**.

32. Mr. Khambata has referred to the definition of Copyright under Rule 2 (c)of the Copyright Rules, 2013. He has submitted that this definition is in wide terms although it also references sub-section (3) of Section 34, which deals with functions that a copyright society may perform qua works of others. He has submitted that definition in Rule 2(c) in any event applies only to the rules. It cannot be applied to interpret Section 31(1), a provision of the primary statute and one that came 19 years before Rule 2(c). He has submitted that if the term "business" is given the wide meaning, then, there would necessarily be a conflict between Section 30 and 33 of the Act.

33. Mr. Khambata has submitted that in any case, the Rules are a piece of subordinate legislation. They cannot be considered to control the provisions of the Act especially if they cause conflict or absurdity in reading of the substantive provision of the Act.

34. Mr. Khambata has submitted that the different chapters in an Act cover different demarcated aspects. Chapter VII of the Act covers 'Copyright Societies' and further expounds on the conditions of

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the registration and other associated aspects, whereas Chapter VI of the Act creates a statutory right of licensing. He has submitted that a section which comes under Chapter VII dealing with copyright societies cannot in effect, take away a right granted under a completely different chapter. Particularly when the "clearest of language" in this regard as used in the second proviso is absent.

35. Mr. Khambata has submitted that the contention of the Defendants that the later provision i.e. Section 33 would prevail over an earlier provision i.e. Section 30 of the Act has become obsolete in England. Even under Indian law the Supreme Court in K.M. Nanavati's case *(supra)* made it clear that the rule is to be applied along with several other rules. The Supreme Court has treated the rule of the later provision as one amongst a basket of rules which must operate together with other rules and which moderate and temper each other. It cannot be said that this last rule supersedes every other rule and the only thing that matters for harmonizing or resolving ambiguity is to see which is the latter provision as sought to be argued by the Defendant. The Supreme Court has also held that if there is a conflict between two provisions of a statute then it has to be determined which is the **leading provision** and which is the subordinate provision and which provision must give way to the other. If this test is applied the positive clear provision conferring statuary rights upon an owner to grant license is Section 30. Section 33(1) does not deal with owner's right of licensing.

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36. Mr. Khambata has submitted that interpretation leading to unreasonable results must be eschewed. He has in this context placed reliance upon the decision of the UK Supreme Court in "***Gill v Donald Humberstone & Co. Ltd".***[6] In the said decision the UK Supreme Court has elucidated the principle that if the language of a section is capable of more than one interpretation then, the Court should avoid natural meaning if it leads to an unreasonable result.

37. Mr. Khambata has submitted that the Defendants interpretation on 33 (1) must be eschewed as it will lead to absurd and unreasonable results. If such interpretation is accepted on withdrawal of authority by the owner from the registered copyright society (as is permissible under Section 34(1)(b)) **no one** will be able to license the work- not even the owner himself. The first proviso to Section 33(1) will place the owner who is a **member** of a copyright society in a better place (i.e. being able to license) then one who had never been a member at all (who could not, on the Defendants' interpretation, license its own work).

38. Mr. Khambata has referred to the first Proviso to Section 33(1) which recognizes right of an owner to grant licenses even after such owner becomes a member of a registered Copyright Society. The only embargo in such a case is that the owner can grant a license consistent with its obligation qua such registered society. He submitted that what flows from the first proviso to Section 33 is that if as a member of a copyright society an owner can license his own works,

6[1963] 1 WLR 929

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surely a non-member cannot be prevented from licensing his own works.

39. Mr. Khambata has submitted that the the first proviso to Section 33(1) uses the phrase '*individual capacity*'. He has submitted that the term individual capacity should not be considered to be equivalent to exercise of rights by individual authors or owners *personally.* It should rather be understood to mean **any method other than collective management** whereby right holders make their *own* decisions about exercise of the rights in the works.

40. Mr. Khambata has submitted that the defendants have contended that the words 'individual capacity' in Section 33(1) is the opposite of business and therefore an owner licensing his works in his individual capacity would not be doing business as per Section 33(1) of the Act. He has submitted that this argument is also completely untenable since there is nothing in the Act to suggest that the words individual capacity is the opposite of business. He has submitted that a company can also do business in its individual capacity. He has submitted that the use of the expression '*carrying on business*' must be interpreted contextually. The same would not cover the owners' activity of carrying on business and include carrying on business of issuing licenses in its own name but in which others hold copyright. Hence, the expression "individual capacity" in Section 33(1) must be interpreted as meaning only anything opposed to "collective capacity" i.e. through a society. That is collective administration of owner's rights.

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41. Mr. Khambata has thereafter referred to the second Proviso to Section 33 (1) of the Act. He has submitted that prior to 2012 Amendment by which the second proviso was added to Section 33(1), the authors of the underlying work lost their rights to their works to the owners of the sound recording or the owners of the cinematograph film who had employed them to create the underlying work. In order to correct this specific mischief a proviso was added to Section 17 as well as Section 18 as per the 2012 Amendment Act. These provisos stated that even if an individual who has authored a work has been employed by someone else i.e. the owner of the copyright, the authors' rights to the underlying work would not be affected by the ownership of the copyright by the employer. He has referred to Minister's speech tabling the 2012 Amendment and has submitted that the second proviso was introduced to assuage the grievances and/or concerns of the "**author**" community and this can also be culled out from the statement of objects and reasons to the said amendment.

42. He has also referred to the speech of the Minister of Information and Broadcasting whilst tabling this amendment, which is in this context. Further he has also referred to Parliamentary Committee 227th Report- 2011 Bill from which the discussion on the amendment to Section 33 can be ascertained. He has submitted that it is clear therefrom that the object of the amendment was to augment /strengthen the eco system with respect to the "**author"** community and ensuring equal representation of "**authors**" and "**composers**" on one hand, and "**owners**" on the other, in copyright societies.

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43. Mr. Khambata has submitted that what is significant to note in the 2nd proviso is that there is a complete embargo on carrying on the business of issuing or granting license in respect of the underlying work and this business can be carried out "**only**" through a copyright society. Therefore, it is clear that when the legislature specifically wanted rights of owners / authors to be curtailed, there was a specific, clear and unambiguous provision. **This language is absent in Section 33(1)**. He further submitted that if the Defendants argument is accepted that Section 33(1) prevented all owners, including authors, from doing the business of granting license of copyright, then there would be no need of the second proviso.

44. Mr. Khambata has submitted that the second proviso was needed since the Parliament was clear that Section 33(1) did not prevent all owners including authors from licensing their copyrights for profit and since parliament wanted to draw distinction between the authors and the owners the second proviso became necessary. Hence it is specifically mentioned that licensing by the authors of the underlying works will **only** be done by the copyright society.

45. Mr. Khambata has submitted that if the second proviso to Section 33(1) is clarificatory (as argued by the Defendants), this would mean that the Parliament only wished to clarify this position for underlying works and not for any other works. Therefore even this case as canvassed by the Defendants **militates against** the interpretation sought to be propounded by them. He has submitted that the Supreme Court in ***"Shree Bhagwati Steel Rolling Mills vs.***

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Commissioner of Central Excise".[7] at Paragraph 21 held that '<u>Parliament is deemed to know the law</u> and therefore the fact that the Parliament has amended Section 33(1) in 2012 by adding the second proviso shows that Parliament itself did not think Section 33(1) barred every owner of a copyright from carrying on the business of licensing his works'.

46. Mr. Khambata has submitted that the Division Bench of this Hon'ble Court in the case of Phonographic Performance Limited v. Avion Hospitality Pvt Ltd & Ors. has set aside the view taken by a Learned Single Judge of this Court in ***"Phonographic Performance Ltd vs City Organisers Pvt. Ltd.".***[8] which had accepted the interpretation as sought to be canvassed by the Defendants. The Division Bench in ***"Avion Hospitality Pvt. Ltd."*** (supra) accepted the interpretation placed by counsel for the Plaintiff on Section 33 read with Section 34 of the Act and had found that the learned Judge's attention was not invited to several provisions of the Act from which it can be construed that the Plaintiff-Novex has locus to file the suit or claim injunction.

47. Mr. Khambata has submitted that the decision of the Madras High Court in ***"Novex Communications Vs. DXC Technology Pvt. Ltd.".***[9] does not assist the Defendant. He has submitted that the Madras High Court in the said decision has erroneously framed an issue whether Novex is entitled to grant licenses or not. The subject matter of the dispute before the Madras High Court was whether DXC Technology was infringing Novex's copyright or not, it wasn't whether

7[2016) 3 SCC page 643
8[Comm. Suit No. 740/2017 dated 21.12.2017
9[2021) SCC online MHC 6266

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Novex was entitled to grant licenses or not. He has submitted that the Madras High Court had relied heavily upon the reasons for introducing the 2012 amendment, in support of its decision. The Madras High Court held that a careful examination of Section 18, 30 and 33 show that while the right of the owner in his individual capacity is retained, the right to carry on the "**business of issuing and granting licenses**" is taken away on account of the bar contained in Section 33(1) read with the second proviso. The judgment also holds that the word "only" occurring in the second proviso can be done only through a registered copyright society.

48. Mr. Khambata has submitted that the Madras High Court has in the said decision misconstrued the judgment of this Court in the case of *Leopold* (supra) and completely misapplied the ratio contained therein. The Madras High Court failed to appreciate that in Leopold *(supra)*, Novex was merely an agent acting on behalf of undisclosed principle (which this Court held was prohibited by Section 33). The Madras High Court has conflated the first and the second proviso to Section 33(1) and applied its interpretation of the second proviso which deals with the authors of the underlying works to the first proviso which deals with assignees/ owners of the entire sound recording.

49. Mr. Khambata has submitted that the argument of the Defendants is that the assignment is obtained by the plaintiff for the purpose of issuing and granting licenses and therefore cannot be enforced before this Court in view of Section 33(1). Since there is no

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bar in the Act in obtaining an assignment, at best and without prejudice to the argument elucidated above and, in the alternative, the bar would kick in only in respect of the actual grant or issuance of licenses. **That will not affect the right of an owner independently to bring a suit for infringement of copyright and seek reliefs.**

50. Mr. Khambata has submitted that another fact is that the Defendants have no independent right of its own. They are rank infringers. The Defendants have not even attempted to justify their entitlement in exploiting the subject sound recordings and has merely sought to assail Novex's entitlement to seek reliefs on the ground that Novex is not a registered copyright society. Once it is observed that the right to seek relief for infringement is not jeopardized, the relief as sought by Novex must follow. This is clear from a reading of Sections 13, 14 r/w. 51 (a)(i).

51. Mr. Khambata has submitted that the Defendants' contentions are that the Assignment Agreements are illegal and erroneous. The Assignment Deeds have been executed for a substantial consideration between the music labels and Novex for transferring the 'on ground performance rights' in consonance with Section 18 of the Act. He has submitted that all that the Suit is concerned, is whether Novex is the exclusive owner of the Copyright and whether Novex has a right to prevent the infringement of its exclusive Copyright. Therefore, if it is held that Novex is the exclusive owner of the Copyright then what logically follows is that the Defendants have to be injuncted from infringing upon Novex's exclusive Copyright. This

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would be irrespective of whether or not there is a bar under Section 33(1) of the Act preventing Novex from carrying out the business of issuing licenses of its Copyrights.

52. Mr. Khambata has submitted that when an owner takes an assignment of copyright, the object is to take ownership of the copyright. The consideration which prompted that is not the object or purpose of the contract. Analysis of the contracts entered into by Novex will show that the contracts have not even said anything about the assignment being taken for the purpose of business of granting license. Even assuming the contract did say that the contract was for the purpose of doing the business of granting license that would only describe the motive of the contract i.e. the reason Novex desired to take the assignment but that motive would still not be the object of the contract. Thus, Defendants' contention that if Novex has taken an assignment solely for the purpose of doing business, in licensing, then the assignment is for an unlawful object and therefore void, under Section 23 of the Contract Act, is misconceived.

53. Mr. Khambata has submitted that the the Assignment Deeds are extremely specific and meet the requirements of Section 19. The Assignment Deeds categorically state that the ownership rights in the works are being assigned to Novex and there is no mention in the Assignment Deeds of the assignment being for the purpose of doing business in licensing. Therefore, the argument of the Defendants that the assignment is solely for the purpose of doing business in licensing must be rejected.

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54. Mr. Khambata has accordingly submitted that there is no question of there being any impediment in the Plaintiff's entitlement to the reliefs as sought. Equally, the fact that the Plaintiff is not a registered copyright society does not impair its ability to the reliefs as sought.

55. Mr. Ravi Kadam, learned Senior Counsel appearing for the PPL has submitted that PPL owns and controls (by Exclusive Licenses) the public performance rights of various music labels which include both, international and domestic recordings. The repertoire of the recordings in which rights are assigned to PPL extend to around 400 labels and more than 45 lakh recordings. PPL issues licenses for public performances / communication to the public of sound recordings on the basis of exclusive rights assigned to it under various assignment agreements by these music labels. He has submitted that PPL has Assignment agreements with 60% of the labels in its repertoire whereby the following rights have been assigned exclusively to PPL. These Agreements can be found on the official website of PPL. Further, he has submitted that with respect to 11 labels, PPL is the 'Exclusive Licensee' of the copyright in the sound recordings. Barring these 11 labels, for all the other labels i.e. 393 of 404, PPL has Assignment Deeds executed for the copyright in the sound recordings.

56. Mr. Kadam has placed reliance on the relevant definitions under the Copyright Act namely Section 2(d) which defines Author; Section 2(f) which defines Cinematograph film;

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Section 2(ff) which defines Communication to the public; Section 2(j) which defines Exclusive licence; Section 2(uu) which defines Producer; Section 2(xx) which defines sound recording; Section 2(y) which defines work and Section 2(ffd) which defines Copyright society. He has also referred to relevant provisions of the Act which includes Sections 13, 14, 17, 18 ,19, 30 and 33.

57. Mr. Kadam has submitted that one of the objections raised by the Defendant is that PPL cannot sue without joining the owner in respect of the exclusively licensed works. He has referred to Section 54 of the Act, which provides that unless the context otherwise requires, the expression "*owner of copyright*" shall include an "*exclusive licensee*". Further Section 55 provides that where the copyright in any work has been infringed, the owner of the copyright shall be entitled to all such remedies including an injunction. From a reading of Section 55 with Section 54, an exclusive licensee would be entitled as an owner of copyright for the purposes of Chapter XII to institute a Suit and seek an injunction in relation to an infringement of copyright in any work covered by the exclusive license.

58. He has further referred to Section 61 of the Act which provides Owner of copyright to be party to the proceeding. He has submitted that in the present case, the infringement by failure to obtain license by the various Defendants is not only in relation to works of which the Plaintiff/PPL is an exclusive licensee but also in respect of works of which it is itself an

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owner. Thus and for that reason, Section 61(1) would not apply.

59. Mr. Kadam has submitted that PPL's repertoire has a majority of works over which it is the owner. These are two compelling reasons and factors because of which the Court ought to exercise its discretion under Section 61(1) to hold that it is not necessary to make the 11 music labels who are Licensors/Owners of the works as party Defendants to the Suit.

60. Mr. Kadam has submitted that upon reading of the aforementioned provisions of the Act, when an owner is monetizing copyright in any work, the owner is doing so for gain or for profit. Regardless of the scale at which such activity resulting in monetization of copyright takes place, it is a commercial or a business activity as it is being done for gain. Any restriction or curtailment of exercise of ownership rights whether by self-exploitation; assignment; license, depending upon scale or motive/manner of exercise or regularity of exercise of such ownership rights would be reading into the Act facets or nuances relating to the primary right of ownership of a copyright, which the Act does not in its language provide for at all.

61. Mr. Kadam has placed reliance upon provisions of the Bern Convention (1896), to which India is a signatory and particularly Article 2 (6), which provides that the protection of works mentioned in this Article shall **shall operate for the benefit of the author and his successors in title.** Article 5 (1), which provides

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that Authors **shall enjoy**, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, **as well as the rights specially granted by this Convention**. **Further, under Article 5(2) it is provided that, the enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work.** Further Article 9, which is Right of Reproduction, provides that Authors of literary and artistic works protected by this Convention shall have the **exclusive right** of authorizing the reproduction of these works, in any manner or form. It shall be a matter for the legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and **does not unreasonably prejudice the legitimate interests of the author**.

62. Mr. Kadam has submitted that in view of the aforementioned, the primary objective of copyright and provisions relating to copyright is being for the benefit and enjoyment and protection of the owner. He has also placed reliance on an extract from *Copinger and Skone & James* on Copyright Volume I, page 1503, Paragraphs 18-28 in this context.

63. Mr. Kadam, has supported the submissions of Mr. Kambata as to the interpretation of Chapter VII of the Act brought by the 1994 as

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well as 2012 Amendments, by which the second proviso to **Section 33(1)** was added. He has submitted that the embargo or prohibition on a person or association of persons commencing or carrying on the business of issuing or granting licenses in respect of any work in which copyright subsists other than by registering such association of persons as a copyright society [**Section 33(1) r/w Section 33(3)**] has no application to the issuing or granting of licenses in respect of any work by an owner or by an exclusive licensee who by the terms of the exclusive license is entitled to issue further licenses in respect of the work. This interpretation is supported by the provisions of the Act pertaining to ownership analysed. It is also in consonance with the first proviso to Section 33(1). This proviso clarifies that an owner of copyright shall in his individual capacity, continue to have the right to grant licenses in respect of his own works.

64. Mr. Kadam has submitted that there is nothing in the language of **Chapter VII** or the relevant rules appearing in **Chapter XI** of the Copyright Rules 2013 that mandates or forces owners who may in a given case own copyright in a large repertoire of sound recordings to become members of a registered copyright society. He has also placed reliance in this context on **Section 34(1)(b)** of the Act.

65. Mr. Kadam has further submitted that the expression in his individual capacity appearing in the first proviso to **Section 33** has nothing to do with whether the owner of copyright in a sound recording is granting licenses on a small or large scale so as to constitute such activity as a business. The expression '*capacity*' when used in the

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context of a particular status applies where a person enjoys two statuses simultaneously. He has supported this interpretation placed by Mr. Khambata on the first proviso to Section 33 (1) in this context.

66. Mr. Kadam has submitted that the decision of the Madras High Court in "***Novex Communications Pvt. Ltd. Vs. DXC Technology Pvt. Ltd"*** *(supra)* has overlooked Section 30 which only speaks of the owner's rights to license and does not talk about any capacity or does not talk about whether the activity is done at an individual level or as a business. He has submitted that the Madras High Court has completely lost sight of the phrase individual capacity appearing in the first proviso to Section 33(1), applies in the context of that proviso where the owner of a copyright in a work becomes a member of a Registered Copyright Society for that category of works. This subjectivity of 'individual capacity' transcending into the realm of business is a notion introduced by the judgment and brings about a whole world of uncertainty and ambiguity in the application of the provisions of the Act in paragraph 55. Further, the Madras High Court has concluded that the entity like the plaintiff therein which is involved in the business of issuing licenses falls within the net of the second proviso of Section 33 (1). There is no reasoning as to how the granting of licenses in respect of sound recordings which is not covered by the second proviso of Section 33(1) would take the activity of the Plaintiff within that second proviso.

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67. Mr. Kadam has submitted that if the argument of the Defendants that the 'business' of licensing can be conducted only through a copyright society is to be accepted then, it would only be the Copyright Society who would be in a position to maintain a suit for infringement. The Defendants' have failed to address the issue that no conditions have been introduced in Section 51 and Section 19 for exercise of rights by the Copyright Owner at the time when the Copyright Society chapter was introduced in the Act. He has accordingly submitted that the PPL in the present case has exercised its rights as an owner and is not administering the rights of others. This has been overlooked by the Defendants in their arguments. He has accordingly submitted that PPL by exercising its rights as owner is able to seek reliefs as sought for in the above suits.

68. Dr. Virendra Tulzapurkar, learned Senior Counsel appearing for the Defendants in the above suits has submitted that the prohibition imposed by Section 33(1) applies if the following two conditions are satisfied: (i) Plaintiff is a "*person or association of persons*"; and (ii) Plaintiff carries on business of issuing or granting licenses. He has submitted that both PPL and Novex in the above suits are limited companies and therefore, fall within the meaning of "*persons*". He has submitted that there is nothing in the language of Section 33(1) to suggest that the word "*persons*" excludes owners of copyright. On the contrary, "*persons*" as used in Section 33(1) must include owners because Section 33(1) refers to issuing of licenses. Admittedly, only an owner can issue a license under Section 30 of the Act.

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69. Dr. Tulzapurkar has submitted that since there is no ambiguity in the language of the section, the first rule of statutory interpretation, i.e., of literal interpretation, would demand that the word "*persons*" be given its natural grammatical meaning without any artificial limitations or restrictions.

70. Dr. Tulzapurkar has submitted that Section 33(1) prohibits "*any person or association of persons*" from carrying on the "*business of issuing or granting licenses*" without registration as a copyright society. PPL and Novex as aforementioned are covered by Section 33(1) as they are clearly "persons" as well as carry on a commercial activity that qualifies as "business".

71. Dr. Tulzapurkar has submitted that Section 30 and Section 33(1) operate in separate fields and do not conflict which each other. While Section 30 deals with the general right of an owner to grant a license, Section 33(1) regulates the business of licensing. The law is plain and clear - an owner has the right to issue a license. When his licensing activity enters the realm of "*business*", he is subject to statutory regulation under Chapter VII and must carry on his activities either by seeking registration as a copyright society or by doing it through a registered copyright society. Assuming without admitting there is a conflict, even then Section 33(1) is a special provision and must prevail over the general one. Moreover, the object of copyright law and legislative intent behind Chapter VII is to balance the rights of owners and public interest by

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protecting the rights of users. This would mean owners too are covered by Section 33(1).

72. Dr. Tulzapurkar has submitted that Section 33(1) does not efface or make Section 30 redundant. An owner's right to monetise his copyright through licensing is not taken away at all, it is merely regulated by Section 33(1). Such regulation is perfectly permissible when done by way of statute. In fact, Section 34(3) expressly preserves the right of licensing available under Section 30.

73. Dr. Tulzapurkar has submitted that the First Proviso to Section 33(1) does not come to the aid of PPL and Novex because (I) it applies only to members of a Copyright Society; (ii) Assuming the First Proviso applies to non members, even then PPL and Novex are not covered as they do not issue licenses in their "individual capacity" or in respect of their "own works".

74. Dr. Tulzapurkar has submitted that the purported assignment agreements relied upon by the Plaintiffs are void and do not validly transfer actual ownership rights to the Plaintiffs as: (i) they do not identify the "*work*" as required under Section 19(2); (ii) they fall foul of the requirement to specify payment of royalty to authors; (iii) they do not confer actual ownership rights but are designed only to circumvent Section 33(1); and (iv) in case of PPL, there is no assignment/transfer of ownership in respect of 40% of the sound recordings.

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75. Dr. Tulzapurkar has further submitted that the Second Proviso to Section 33(1) has no relevance to the present matter. It was brought in by way of amendment in 2012 to correspond to the changes made to Section 18 to protect owners of underlying works. It does not impact Section 33(1), which has been on the statute books since 1994.

76. Dr. Tulzapurkar has submitted that the Division Bench of this Court in ***PPL vs. Avion Hospitality Pvt. Ltd.***[10]*,* disposed off the appeals against a set of ad-interim orders by clarifying that the Defendant may raise "*appropriate contentions including raising the issue of maintainability of the Suits at the instance of the present Plaintiff.*"

77. Dr. Tulzapurkar has submitted that PPL and Novex have not filed a simpliciter suit for injunction on grounds of infringement. On the contrary, their entire case is that they are entitled to issue licenses and collect license fees. On this basis, they have sought a limited injunction against the Defendants from playing sound recordings without taking a license from the Plaintiffs. This is evident from the Plaintiffs' own pleadings. He has relied upon Paragraphs Nos. 6,9,11,13,28 and 32 of the plaint in Suit No. 157 of 2023 and Paragraphs Nos. 4, 6, 9 of Legal Notice dated October 4, 2022 issued by Plaintiff's advocate in respect of the alleged infringement at page no. 59 of the plaint in Suit No. 157 of 2023 and Paragraph no. 8 of Legal Notice dated October 4, 2022 issued by

10 Order dated 22nd December 2017 in Commercial Appeal (L) no. 100 of 2017.

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Plaintiff's advocate in respect of the alleged infringement at page no. 76 of the plaint in Suit No. 157 of 2023.

78. Mr. Tulzapurkar has submitted that all the ad-interim orders obtained by PPL and Novex in the matters under consideration were limited to directing the Defendants to deposit the license fees in court if they wanted to play the sound recordings or directing the Defendants to take a license from PPL and Novex on a without prejudice basis. Neither did PPL/Novex seek nor did the Court grant them an injunction simplicitor.

79. Dr. Tulzapurkar has submitted that argument of PPL and Novex runs contrary to the well-settled principle of *ex turpi causa non oritur actio* or *ex dolo malo non oritur actio* i.e., a Plaintiff cannot find his cause of action on an illegal act or amounts to transgression of a positive law. This principle finds its modern origins in the classic passage of Lord Mansfield C.J. in the 1775 case of *Holman vs. Johnson*: He has submitted that this passage has been cited with approval by the Supreme Court and High Courts in several cases where the plaintiff's cause of action emanated out of an illegal act.

80. Dr. Tulzapurkar has submitted that the Supreme Court in "***Narayanamma & Anr. Vs. Govindappa & Ors".***[11] has recently reviewed the entire law on *ex turpi causa*, including Lord Mansfield's seminal passage, and reiterated that if the plaintiff's cause of action

11 [*(2019) 19 SCC 42*]

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is based on an illegality, it will not grant any relief to the plaintiff, even if the defendant is guilty.

81. Dr. Tulzapurkar has submitted that the decision relied upon by PPL and Novex namely the English Supreme Court's decision in "***Patel v Mirza***"[12] to counter the above does little to assist the Plaintiffs. The said decision actually supports the Defendants' case as it makes clear that *ex turpi causa* is indeed a valid defence and that courts must examine the underlying purpose of the prohibition and the public policy involved.

82. Dr. Tulzapurkar has submitted that the Plaintiffs reliance on *Gurumukh Singh v Amar Singh [(1991) 3 SCC 79]* is also misplaced. The said case dealt with an allegation that the object of the contract was harmful to public policy. There was no contravention of any law involved. In the instant case, however, the Plaintiff's actions are in direct contravention of Section 33(1) of the Copyright Act. As per the law laid by the Supreme Court, it would be impermissible to grant relief to such a plaintiff.

83. Dr. Tulzapurkar has submitted that PPL's and Novex's activities fall under Section 33 (1) of the Act and which is apparent from Clauses 3(a), 3(y), 3(z), 3(aa) and 3(ab) of its Memorandum of Association as well as 3.20 and 12 of its Articles of Association. This is also apparent from PPL's Annual Report for the year ended March 31, 2022 which shows that its principal activity is granting

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12 *[(2016) UKSC 42]*

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public performance licenses. Further, a holistic reading of the purported Assignment Deeds relied upon by PPL also points to the fact that PPL is in fact engaged in the business of issuing licenses.

84. Dr. Tulzapurkar has further submitted that the clinching factor on this issue is PPL's antecedents. PPL was previously registered as a copyright society under Section 33 of the Copyright Act and admittedly carried on the business of issuing licenses. It applied for re-registration in 2013 but withdrew its application in 2014. It once again applied for re-registration in 2018, which was rejected by the Government on grounds of delay. PPL challenged this rejection before the Delhi High Court. The High Court directed the Government to consider PPL's application on merits. *Vide* order dated June 9, 2022, the Government rejected PPL's application on the ground that PPL "*has no professional competence to carry on its business and manage its affairs in accordance to the provisions of the Copyright Act 1957 and Copyright Rules, 2013*". Pertinently, PPL has been carrying on exactly the same business of issuing licenses and collecting license fees. More importantly, the very fact that PPL was previously registered as a society and continued to fight for registration shows that PPL itself is aware that registration is required to carry on the business of licensing.

85. Dr. Tulzapurkar has submitted that similar is the case with Novex namely that they carrying on business of issuing / granting licenses. This is apparent from Clauses 1, 4 and 11 of the Memorandum of Association of Novex which makes it clear that the

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main object of Novex is to carry on business of granting licenses. Further, Novex's Annual Report for the year ended 31st March, 2022 which clearly shows that Novex's principal activity is granting public performance licenses. Further, Novex's website while referring to public performance rights states "*Novex is engaged in the business of giving public performance rights in sound recordings*". Further, a holistic reading of the purported Assignment Deed dated August 11, 2015 executed with Zee Entertainment Enterprises Ltd. clearly shows that Novex is in fact engaged in the business of issuing licenses.

86. Dr. Tulzapurkar has thereafter, referred to the definition of "copyright business" in Rule 2(c) of the Copyright Rules, 2013 namely "*business of issuing or granting licence in respect of any class of works in which copyright or any other right conferred by the Act subsists, and includes the functions referred to in sub-section (3) of section 34*". He has submitted that the legislature has consciously chosen to define this term widely and has not excluded the business of licensing carried out by owners.

87. Dr. Tulzapurkar has placed reliance upon the decisions of Courts on what is meant by "*business*" or "*carrying on business*", which are as under:-

i) '*Smith vs. Anderson*'[13]

ii) '*Bata Shoe Co. Ltd. vs. Union of India*'[14]

13 [*1879 Vol. XV Ch. Div. (CA) 247*]

14 [*AIR 1954 Bom. 129*]

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iii)'*Sri Gajalakshmi Ginning Factory Ltd. vs. Commissioner of Income Tax'* [15]

iv) 'Barendra Prasad Ray vs. Income Tax Officer' [16]

v) 'State of Tamil Nadu vs. Board of Trustees of the Port of Madras' [17].

vi) 'State of Andhra Pradesh vs. H. Bakhi' [18].

vii) 'State of Gujarat vs. M/s. Raipur Manufacturing Co. Ltd.' [19].

88. Dr. Tulzapurkar has submitted that PPL and Novex have relied upon "***S Mohan Lal v R Kondiah*** [20]**"** and **"*P K Kesavan Nair v C K Babu Naidu*** [21]**"** to contend that the word "business" should be interpreted as per context. However, reference to these cases does not assist PPL and Novex in any manner. There is no justifiable reason given by PPL and Novex to discard the definition of 'business' in the Copyright Rules namely Rule 2(c) of the Copyright Rules, 2013. Further, PPL and Novex have not denied that they indeed carry on business. Their own documents as aforesaid clearly show that PPL and Novex are in the business of licensing.

89. Dr. Tulzapurkar has submitted that PPL and Novex have based their argument on an incorrect assumption that an assignment from the original owner takes them out of the regulatory ambit of

15 [*AIR 1953 Mad 343*]
16 *[(1981) 2 SCC 693]*
17 *[(1999) 4 SCC 630]*
18 *[AIR 1965 SC 531]*
19 *[AIR 1967 SC 1066]*
20 *[(1979) 2 SCC 616]*
21 *[1953 SCC OnLine Mad 368]*

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Chapter VII of the Copyright Act and Chapter XI of the Copyright Rules.

90. Dr,. Tulzapurkar has submitted that the plain language of Section 33(1) does not exclude owners/assignees. There is nothing in the language to suggest that an assignment from an owner entitles an assignee to carry on the business of licensing to public at large without any regulatory fetters.

91. Dr. Tulzapurkar has submitted that there is nothing to suggest that this "*contract*" or "*agreement*" referred to in Section 34 and Rule 54 excludes an agreement of assignment. The trigger for regulation is the nature of the activity, i.e., business of licensing, and not the mode of acquisition of the right to carry on such business.

92. Dr. Tulzapurkar has submitted that there is no conflict between Section 30 and Section 33(1). Alternatively, assuming without conceding there is any conflict, even then Section 33(1) would prevail over Section 30. Section 30 is a general provision that deals with an owner's general right to license his copyright. Section 33, on the other hand, is part of Chapter VII of the Copyright Act, which is a special provision and self-contained chapter that elaborately governs the business of granting and issuing licenses. Moreover, the present Section 33 is a latter provision that was brought in by way of an amendment in 1994. Thus, the legislature had notice of Section 30 when it enacted Section 33(1).

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93. Dr. Tulzapurkar has submitted that it is well settled law that the general law must yield to the special law. The Supreme Court in a catena of cases has reiterated this well settled Latin maxim "*generalia specialibus non derogant".* In ***"Commercial Tax Officer, Rajasthan vs. Binani Cements Ltd. & Anr."*** [22], the Supreme Court exhaustively reviewed the judicial precedents on the subject and noted that this principle is applicable not only amongst two statutes but also finds utility in resolving a conflict between a general and specific provision of the same statute. Further, it is also an accepted principle of interpretation that in case of conflict between two provisions of the same statute, the latter provision will prevail over the former. See ***K.M. Nanavati*** vs ***The State of Bombay*** [23] and *In Re:* ***W. G. Ambekar***[24]*.* He has further submitted that both above principles are squarely applicable to the facts of the present case and would mandate that Section 33(1) must prevail over Section 30.

94. Dr. Tulzapurkar has submitted that it is now well accepted that copyright law is not designed for protecting the interest of owners alone. It is intended to balance the rights of the owners with the rights of end users. He has placed reliance upon Article 27 of the Universal Declaration of Human Rights where this principle finds its origins. This is also noted by P. Narayanan in *Law of Copyright and Industrial Designs* 4th Edition where Article 27 is reproduced. Further, "***Copinger and Skone & James on Copyright"*** [25]

22 *[(2014) 8 SCC 319]*
23 [*AIR 1961 SC 112*]
24 *[MANU/MH/0148/1952]*
25 *(15th Edition)*

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explains the rationale for copyright societies (also known as collecting societies). The author notes that collecting societies benefit rights owners and users alike, and in principle operates for the benefit of the public.

95. Dr. Tulzapurkar has submitted that India is not alone in regulating the business of collective administration of copyright. Among common law countries, the UK has adopted the 'Collective Management of Copyright (EU Directive) Regulations 2016.' Singapore too has an entire chapter on the subject in Part 9 of its Copyright Act, 2021. Thus, given the strong public interest involved in the collective administration of copyrights, governmental regulation of such business is commonplace across jurisdictions.

96. Dr. Tulzapurkar has submitted that after noticing the problems with the activities of copyright societies introduced by the 1994 Amendment, the Act was further amended in 2012 to incorporate additional provisions for regulation of copyright societies. Elaborate rules were also framed under Chapter XI of the Copyright Rules 2013. He has placed reliance upon the provisions of the Copyright Act and Rules that regulate the business of granting license. He has submitted that it is evident that the Chapter VII of Copyright Act and Chapter XI of the Copyright Rules put in place an elaborate regime to regulate the business of issuing licenses. The Statement of Objects and Reasons to the 2012 Amendment also notes that one of the objects for the amendment was to "*make provision for formulation of a tariff scheme by the copyright*

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societies subject to scrutiny by the Copyright Board". He has also placed reliance upon the 227th Report of the Parliamentary Standing Committee dated November 2010 on the Copyright (Amendment) Bill 2010 that ultimately led to the 2012 Amendments to the Copyright Act. He has submitted that reference to the above material is appropriate and necessary to ascertain the legislative intent behind Chapter VII of the Copyright Act. Such reference to legislative history has been approved by the Supreme Court in "***R. S. Nayak vs. A. R. Antulay***"[26] wherein it was held that the function of the court is to give effect to the real intention of Parliament. These materials are permissible aids to construction and their denial would deprive the court of substantial and illuminating aid to construction.

97. Dr. Tulzapurkar has placed reliance upon the decision of the Supreme Court in "***Entertainment Network (India) Ltd. vs. Super Cassette Industries Ltd".*** [27] wherein the Supreme Court has noted that the provisions of Chapter VII of the Copyright Act serve the dual objective of having copyright societies, i.e., to maintain a balance between the protection of owners' rights and interest of the public to have access to the works.

98. Dr. Tulzapurkar has submitted that the expansive words of Section 33(1), i.e., "*no person or association of persons shall commence or carry on the business of issuing or granting licenses*" clearly underline the intention of the legislature that business of

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26 [*(1984) 2 SCC 183*]

27 [*(2008) 13 SCC 30*]

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issuing licenses can only be undertaken by a registered copyright society. These words are required to be construed in the context of its use in the Copyright Act and Rules which require that: (i) such business can be carried on only by a registered copyright society; (ii) such society is regulated by the Government; and (iii) there is only one society for one category of work. Thus, allowing PPL to carry on the business of licensing without registration would result in escaping the intended regulation and would be contrary to the scheme and object of Chapter VII of the Copyright Act.

99. Dr. Tulzapurkar has submitted that if the Plaintiff's argument is accepted and an assignee/owner is permitted to carry on the business of issuing licenses without registration, then Section 33 itself would be rendered redundant and nugatory. This would be contrary to the clear intention of the legislature to regulate the business of licensing, even if the business is carried out by an assignee/owner. Since only an owner (which term includes an assignee) can issue licenses, it is quite obvious that the intent of Section 33(1) was to regulate owners of copyright who can potentially carry on the business of licensing. Thus, there is no logical basis in the Plaintiffs' argument that Section 33(1) applies to persons other than owners. He has submitted that the law intends that there must be a single copyright society for one class of work to ensure a single window for end-users.

100. Dr. Tulzapurkar has submitted that the law clearly seeks to address a mischief, i.e., of a person carrying on the business of

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licensing without regulation. He has submitted that the statute must be interpreted to avoid this mischief by following the Heydon's Rule or mischief rule. He has referred to the following cases on this point:

a. The Supreme Court in ***"Godawat Pan Masala Products (I) Pvt. Ltd. & Anr. vs. Union of India & Ors"*** [28] it was held that for construing a statute, all sections will have to be read together to ascertain what is the mischief sought to be avoided.
b. In "***Ameer Trading Corporation Ltd. vs. Shapoorji Data Processing Ltd"***.[29] the Supreme Court reiterated that the Heydon's Rule or Mischief Rule must be applied to suppress the mischief that was intended to be remedied, especially when Parliament has consciously made an amendment to the law.
c. In ***"S. Mohan Lal vs. R. Kondiah"*** [30] it was held that the expressions used in the Act must take their colour from the context in which they appear.
d. In ***"Badshah vs. Urmila Badshah Godse"***[31] the Supreme Court relied on the Heydon Rule to hold that courts must avoid a construction that "*would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing an effective result*".

28 [*(2004) 7 SCC 68*]
29 [*(2004) 1 SCC 702*]
30 [*(1979) 2 SCC 616*]
31 [*(2014) 1 SCC 188*]

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101. In "***District Mining Officer vs. Tata Iron & Steel Co. & Anr.***"[32] the Supreme Court explained that legislation is primarily directed to the problems before the legislature and to cover similar problems arising in future. Thus, the legislative intent is to be derived by considering the words in the enactment "*in light of any discernable purpose or object which comprehends the mischief and its remedy to which the enactment is directed*".

102. Dr. Tulzapurkar has submitted that Chapter VII of the Copyright Act requires that the business of licensing be carried on in a particular manner. The Plaintiffs cannot be permitted to circumvent the entire regulatory regime and carry on the business of licensing in a manner other than what is prescribed by law. This would go against the well accepted rule laid down in ***"Taylor vs Taylor Taylor"*** [33] that if the law requires something to be done in a particular manner, it must be done only in that manner or not at all. He has referred to the decision of the ***"Nazir Ahmad vs. The King-Emperor"*** [34] and *State of* ***"Uttar Pradesh vs. Singhara Singh"*** [35], which follows the Taylor Rule.

103. Dr. Tulzapurkar has submitted that the principles of construction propounded by PPL and Novex are misconceived and not applicable to instant case. He has submitted that the decisions relied upon by them in support of "harmonious construction" would

32 [*(2001) 7 SCC 358*]
33 [(1875) Vol.1Ch.D 426]
34 [*1936 LXIII Indian Appeals 372*]
35 [*(1964) 4 SCR 485*]

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require the court to read down Section 33(1) such that "*owners*" are excluded from the word "*persons*". This is contrary to the plain language used in Section 33(1) of the Act. Further, harmonious construction applies only if there is an ambiguity in the language of the statute and cannot be used if the language is clear. In the present case, the language of Section 33(1) is plain and unambiguous. Hence, it would be impermissible to ignore the rule of literal interpretation and apply the rule of "harmonious construction" instead.

104. Dr. Tulzapurkar has submitted that Section 33(1) does not take away the general rights of owners to license their works. On the contrary, it retains and preserves that right but only regulates the manner in which the business of licensing is to be carried on. Thus, all that Section 33(1) requires is that if an owner wishes to carry on the business of licensing, he must do it in the legally mandated manner, i.e., through a registered copyright society.

105. Dr. Tulzapurkar has submitted that PPL and Novex have relied upon the decisions in ***"Union of India vs. Dileep Kumar Singh"***[36] to contend that the court must give precedence to the leading provision over the subordinate provision. However, this case too is inapplicable in the present situation. PPL and Novex have been unable to explain how Section 30 is a leading provision and Section 33 is a subordinate provision. On the contrary, the two operate in separate fields altogether.

36 [(2015) 4 SCC 421]

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106. Dr. Tulzapurkar has submitted that PPL and Novex have relied upon decisions in support of their contention that absurd or unintended results of interpretation should be avoided. In the instant case, there is no ambiguity in the language of Section 33(1). There is no absurdity or unintended consequence by adhering to the plain meaning of Section 33(1).

107. Dr. Tulzapurkar has submitted that constant refrain of PPL and Novex was that giving literal interpretation to Section 33(1) would lead to "effacement" of Section 30 and take away the right of an owner to monetise his copyright is completely incorrect.

108. Dr. Tulzapurkar has submitted that Section 33 does not take away an owner's right to license for commercial purposes. All that Section 33 postulates is that the business of licensing should be carried out in a regulated manner by registration under the Copyright Act. If an owner wishes to carry on business, he has to either be registered as a copyright society himself or must carry on the activity through a copyright society. Quite contrary to the Plaintiffs' submission, Section 33(1) would be effaced if the Plaintiffs' submissions are accepted. Since only an owner can issue licenses, exclusion of an owner from its purview would render Section 33(1) completely meaningless and redundant.

109. Dr. Tulzapurkar has submitted that the First Proviso to Section 33(1) does not exempt PPL and Novex from the prohibition of Section 33(1). Apart from claiming to be owners, PPL and Novex have not satisfied the conditions of the Proviso viz. (i) Person is an

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owner of Copyright; ii) Person is acting in his 'individual capacity'; iii) Person grants licenses in respect of his "own works"; iv) the grant is "consistent with his obligations as a member of the registered society".

110. Dr. Tulzapurkar has placed reliance upon the decision of the Supreme Court in ***"Dwarka Prasad vs. Dwarkadas Saraf"*** [37] wherein it is held that a proviso does not travel beyond the main provision. Further, in ***"Delhi Metro Rail Corporation Limited vs. Tarun Pal Singh and Ors"*** [38] the Supreme Court went on to explain that a proviso cannot be interpreted as stating a general rule. He has submitted that there is nothing exceptional in the language or scheme of Section 33(1) or the first proviso to suggest that the proviso warrants a deviation from the general rule of interpretation. It cannot therefore be construed as creating an independent right in favour of the Plaintiff beyond the main enacting section.

111. Mr. Tulzapurkar submitted that it is the contention of PPL and Novex that Section 33(1) is not a prohibition at all and that copyright facilities were merely a facility and option created for the benefit of owners. They have further contended that the 1994 Amendments to the Copyright Act introduced the concept of copyright societies for the first time as facility for owners by enacting Section 33(1). These contentions are plainly incorrect. He has submitted that copyright Societies existed long before the 1994 Amendment. In fact, PPL was founded in 1941 and has been

37 *[(1976) 1 SCC 128]*
38 [*(2018) 14 SCC 161*]

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carrying on the same business ever since. The facility of collective management was always available to owners even prior to 1994. Till 1994, there was no regulation on the business of licensing. Section 33(1) that was introduced by the 1994 Amendment brought copyright societies within the regulatory purview and mandated that the business of licensing should only be carried out through a registered entity. He has submitted that the material relied upon through the course of the hearing including the Supreme Court's decision in ***"Entertainment Network"*** [39], the Parliamentary Debates and extracts from *Copinger* make it amply clear that the object of copyright societies is not just to promote rights of owners but to balance it with public interest by protecting the interests of users.

112. Dr. Tulzapurkar has submitted that the contention of PPL and Novex that copyright societies are "agencies" or administrators of rights does not take that case any further. The decision of the Supreme Court's in ***"Entertainment Network*** **and Delhi High Court's decision in *Lizard Lounge"*** *(Supra)* relied upon by PPL and Novex in this context deal with the question whether business of licensing can be carried out by an owner without registration. Further, Section 33 requires a particular activity, i.e., business of licensing, to be done only by regulated entity/through a regulated entity.

113. Dr. Tulzapurkar has submitted that the contention of PPL and Novex that the authorization granted to a copyright society can be withdrawn by an owner under Section 34(1)(b) would suggest that it is not mandatory for an owner to carry on business only

39 [*(2008) 13 SCC 30*]

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through a society ought to be rejected. All that Section 34(1)(b) says is that an owner is not perpetually bound to be a member of a copyright society and the section enables him to withdraw from a collective management system should he choose to. This is a voluntary act. Once he withdraws, he is in the same position as any other person who is not a member of a copyright society. He can exercise all rights under Section 14 and also issue a license under Section 30 in an individual capacity. But he cannot carry on the business of licensing. If he wishes to recommence the business of licensing, he has to once again join a registered copyright society.

114. Dr. Tulzapurkar has submitted that argument canvassed by PPL and Novex was that Section 31 provides for compulsory licensing. Thus, there is no need to regulate owners who carry on the business of licensing by requiring them to register as copyright societies is wholly fallacious and an incorrect reading of Section 31. Compulsory licensing is a completely different concept from regulation of the business of licensing carried on by copyright societies. He has submitted that Section 31 (1) (a) does not allow a user to challenge a Tarriff Scheme, whereas under Section 33 A this is allowed to a user. Further under Section 31, compulsory license can only be granted to a person whom the board/court finds "*qualified*" to receive a license. There is no such restriction under Section 33A. A decision for compulsory licensing under Section 31 creates a right in rem only in favour of the complainant/prospective licensee. On the other hand, an appeal under Section 33A results in modification of the Tariff Scheme for the public at large. Merely

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because the Copyright Act provides two remedies for two different scenarios, it cannot mean that one of the remedies available in law should be given a complete go-by to.

115. Dr. Tulzapurkar has submitted that there is no valid assignment in favour of the PPL and Novex and thus this cannot be the basis for a suit filed by the Plaintiffs in their capacity as assignees.

116. Dr. Tulzapurkar has submitted that the argument of PPL and Novex is that the second proviso to Section 33(1) uses the word 'business' and applies only to owners of underlying works. The consequence must be that owners of sound recordings such as PPL and Novex are entitled to carry on business without regulation.

117. Dr. Tulzapurkar has submitted that this argument is highly flawed. He has submitted that the second proviso is of no relevance to the present matter as it only applies to underlying works incorporated in films or sound recordings. Sound recordings, that are the subject matter of the present dispute, are directly covered by the main enacting provision, i.e., Section 33(1) which refers to "*any work in which copyright subsists*". Thus, the prohibition against owners of sound recordings from carrying on business except through a copyright society can be found in the main section itself without any reference to the second proviso.

118. Dr. Tulzapurkar has submitted that the main section 33(1) and the First Proviso have been in the statute since the 1994

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Amendments. The Second Proviso was brought in only in 2012. This is relevant because the 2012 Amendment Act also amended Section 18(1) and added provisos therein which prohibited authors of underlying works from assigning or waiving the right to receive royalties except to their legal heirs or copyright societies. Thus, it was necessary to make corresponding clarificatory changes to Section 33(1).

119. Dr. Tulzapurkar has placed reliance upon the decision of the Madras High Court in ***"Novex Communications (P) Ltd. Vs DXC Technology (P) Ltd".*** *(Supra).* He has submitted that the Madras High Court extensively considered all issues relating to Section 33 including the arguments raised by the Plaintiffs in the instant matter. He has submitted that the Madras High Court has correctly holds that Section 33 distinguishes between granting licenses in an individual capacity and carrying on the business of licensing. The Court holds that "*once the grant of license moves from the owner in his individual capacity and transcends into the realm of a business*" Section 33(1) applies. On this basis, the Court concluded that since Novex was statutorily barred from issuing licenses, the very substratum for the relief sought by Novex must crumble like a pack of cards.

120. Dr. Tulzapurkar has submitted that this Court be pleased to answer the aforementioned issue in favour of Defendants and dismiss the Plaintiffs' Interim Applications.

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121. Mr. Hiren Kamod and Mr. Amit Jamsandekar, amongst other Counsel have made submissions for the Defendants in their respective Suits which are in support of the submissions of Dr. Tulzapurkar, and in line with his submission.

122. Mr. Rajiv Narula has made submissions on behalf of the Defendants in Commercial Notice of Motion No. 331 of 2019 in Commercial Suit No. 117 of 2019. He has supported the submissions of Dr. Tulzapurkar on interpretation of the relevant provisions of the Copyright Act including Section 33 and its Proviso. He has placed reliance upon the legislative debate which had also been relied upon by the Madras High Court in '***Novex Communications Vs. DXC Technology Pvt. Ltd***'. *(supra)*. He has in particular has placed reliance upon Paragraph Nos. 38 to 40 and 42 of the said judgment. He has also referred to the 227th Report on Copyright (Amendment) Bill, 2010 by the Parliamentary Committee.

123. Mr. Narula has submitted that in interpreting any statute, the role of the Court is to give effect to the will of the legislature. Where ambiguities exist, the Courts, no doubt, have the power to take recourse to external and internal aids to construe a provision in line with the intention of the legislature. Having examined the background leading to the Copyright (Amendment) Act, 2012, in view of Section 33(1) and its second proviso, the business of granting or issuing licenses in respect of any work in which copyright subsists, can be undertaken only through a copyright society registered under Section 33(3) of the Act.

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124. Mr. Narula has submitted that the second Proviso to Section 33(1) and proviso to Section 33 (3A), being the consequence and effect of the amendments to Section 17, 18 and 19 read with Section 30A, provides that the business of issuing or granting licence (being collection and distribution) of sound recording or cinematograph film, which comprises of the non-assignable and non-waivable rights in literary and musical work *"shall be carried out **only** through a copyright society duly registered under this Act".*

125. Mr. Narula has submitted that the legislative intent to remove the basis of the Supreme Court Judgment in ***"Indian Performing Rights Society vs. Eastern India Motion Pictures Association"***[40] and provide independent and non-assignable and non-waivable right of the authors can be best understood from four paragraphs of the Report of the Standing Committee, 227th Report on Copyright (Amendment) Bill, 2010. These are paragraphs 9.14 to 9.16 and 9.18 of the Report.

126. Mr. Narula has thereafter referred to the Copyright (Second Amendment) Bill, 1992 introduced in Loksabha is on 16th July 1992. He has in this context referred to the statement of objects and reasons and the Notes on Clauses appended to the 1992 Bill which clearly shows the intent of 1992 Bill. This was revised and modified by the Legislature before the enactment of the 1994 Amendment. He has submitted that it is important to note that Section 33(1) as proposed in the 1992 Bill did not contain the 1st

40 [(1997) 2 SCC 820]

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proviso to Section 33(1). The same was introduced subsequently. Therefore, it is obvious that the legislative intent initially was to impose a complete prohibition on any person or association to carry on the business of issuing or granting license except in accordance to the registration granted under Section 33(3) of the Act.

127. Mr. Narula has submitted that the insertion of the definition "copyright society" and "Chapter VIII-Copyright Society" and the deleting the term "performing rights society" is reflected from 1992 Bill. This was in order to widen the scope of collective administration consistent with Clause 11 of the Bill 1992 Bill. He has referred to Clause 2 of the Notes on Clauses of the 1992 Bill in this context. Therefore, the copyright society was not only for the benefits of authors and owners, but also for the general public/users (like the defendants) for whom it is not convenient to obtain licenses.

128. Mr. Narula has joined in the submission of Dr. Tulzapurkar that Novex and PPL have no right to maintain the present suits.

129. Mr. P. Shenoy, learned counsel for the Defendant in Commercial Suit No. 37362 of 2022, has supported the submissions of Dr. Tulzapur and has relied upon the 'Mischief Rule' of Statutory Interpretation, which has also been highlighted by Mr. Khambata in his submissions on behalf of Novex. He has also referred to the functions associated with the business of "Collective Administration of Copyright" and has submitted that what PPL did when they were

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registered as a copyright society and what they continue to do today (when not registered as a Copyright Society), through the artifice of taking limited partial assignments, is the same. He has referred to ***"Copinger and Skone James"*** *(supra)* on Copyright, which articulates the difference between "Individual Exercise of Rights" and "Collective Administration of Rights". He has submitted that an "Individual Exercise of Rights" is where each rightholder of copyright enters into agreements with prospective users of his work without "banding together" with other rightholders. Moreover, when it comes to certain categories of copyright, individual right holders may "band together to exercise rights on a Collective basis" This would involve all the individual rightholders pooling in their individual works to create a common repertoire of works in a single entity, which repertoire is then provided to a prospective user through that single entity. Any entity which manages this repertoire of works pooled together by individual rightholders, whether through assignment of ownership, licensing or agency in common parlance is considered to be a "collecting society" or a "licensing body",

130. Mr. Shenoy has submitted that Section 33(1) of the Copyright Act provides that no person or association of persons shall "commence or, carry on the business of issuing or granting licenses". It is necessary for this Court to give meaning to what is meant by the "business of issuing or granting licenses".He has submitted that these words are used by the Legislature to mean the "Collective Administration of Copyright". The same is borne out of the

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statement and objects and reasons of the Copyright (Amendment) Act, 1992 as well as Clause 11 of Notes on Clause. Further, the title/ heading of Chapter VII is "Copyright Societies".

131. Mr. Shenoy has also joined in the submission of Dr. Tulzapurkar and other counsel for Defendants in submitting that the Plaintiffs have no right to maintain the present suit and that this Court dismiss the Plaintiffs Interim Application.

132. Having considered the submissions, for determining the issue that arises in the above suits viz. whether the plaintiff is entitled to seek reliefs sought for in the plaint without being registered as a copyright society under section 33(1) of the Act, it would be necessary to refer to certain provisions of the Act. In the present case, that PPL and Novex have been partially assigned the copyright under the Sound Recording Agreements i.e. to communicate the sound recordings to the public.

133. Section 14 of the Act defines a copyright to mean the **exclusive** right to reproduce a literary, dramatic or musical work in any material form including storing by electronic means; to make copies of such a work; to perform it in public and in the case of a sound recording it includes the right to sell or give on commercial rentals or to communicate the sound recording to the public. Further, 'Owner' of Copyright is provided in Chapter IV of the Act. As submitted by Mr. Khambata, Ownership of copyright can be acquired in 4 broad ways including through an assignment under Sections 18 & 19 of the Act which is relevant in the present case. These confer

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full and absolute ownership on the author/owner/assignee, as the case may be.

134. Further Section 18(2) of the Act provides as under :

> *"where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned,* ***shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act*** *shall have effect accordingly".*

135. Whereas Section 18 (1) of the Act specifically recognizes the owner's right to assign his copyright either wholly **or partially,** to any person. This is a substantive right which has been provided to an owner under the Act and can be exercised without restrictions except as provided in the section.

136. Thus, in my view a partial assignment created as in the present case in favour of PPL and Novex i.e. to communicate sound recording to the public, to the extent of the right so created, the assignee is an 'owner' of the copyright in the work.

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137. PPL and Novex as assignees/owners of copyright license their work under section 30 of the Act. This Section falls under Chapter VI of the Act and reads as under:

> *"30. Licences by owners of copyright.:-The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in* ***writing by him or by his duly authorised agent****:*
>
> *Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.*
>
> *Explanation.— Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence".*

138. Thus, Section 30 of the Act is the source, which gives an "**owner**" of a copyright who may be an assignee, the power to grant any interest in the copyright by license. Further, Section 30 also specifically empowers a "**duly authorized agent**" of the

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owner, to grant license. Thus, it follows that PPL and Novex as owners/assignees have the power to grant any interest in the copyright by license which would include the interest of communicating the sound recordings to the public.

139. Now turning to the scope and object of the 1994 Amendment which added Chapter VII and in particular sections 33 to 36 in the Act. Clause 11 of the Notes on Clauses reads as follows:

> *"This clause seeks to substitute new provisions for Chapter VII to make provision for copyright societies in respect of any kind of right (and not merely "performer's rights") and to make adequate general provision for the registration and management of such societies in the interests both of authors and of other copyright owners for whom it would be impractical or uneconomical to licence the use of their work individually to all users,…"*

140. Thus, from a reading of Clause 11 of the Notes on Clauses Sections 33 to 36 have been introduced as part of Chapter VII for promoting the collective administration of rights through copyright societies, both for the benefit of the owner as well as the general public. These societies, on an **"authorization"** from the

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owners could administer rights that were either licensed and/or assigned to them. A copyright Society fundamentally operates to administer rights in respect of works that belong to **"others".**

141. In my view, by its very nature, a copyright society may wear two hats i.e. (i) as an authorized agent and (ii) as an assignee. It administers the rights of "owners" by operating as an agent. It is necessary to note that under section 34 of the Act and in particular Section 34 (1) (b) it is provided that an owner will have the right to **withdraw authorization** given to the copyright society. This also shows that an author or other owner/assignee does not have to carry on the business of licensing his works only through a copyright society. Since, once an owner withdraws its authorization from a copyright society, the owner can independently exercise his rights under Section 30 of the Act to grant licenses as he deems appropriate. It could never have been the intention of the legislature that once an author/owner withdraws the authorization from a copyright society then that work cannot be licensed by anyone especially an owner. Such an interpretation would undermine the public interest in making available the copyrighted work to members of the public. In any event the provisions of Section 31, 31A-D would continue to operate to bind all **owners** to grant compulsory and statutory licenses even after withdrawal of authorization under Section 34(1)(b).

142. Thus it is clear that the 1994 Amendment which introduced these provisions was brought in to **protect** and **facilitate**

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the exercise of "**owner's**" rights, **not to restrict or diminish** them in any way.

143. The other relevant provision namely Section 34(3) of the Act clarifies that a copyright society is licensing the works of an "**owner**" under section 30. This means that a copyright society is licensing the works of the "**owner**" as a duly authorized agent under Section 30. Therefore, this is not a new right created in favour of a copyright society independent of the owner or independent of it being a duly authorized agent. Section 35(1) of the Act provides that *"Every copyright society shall be subject to the collective control of the owners of rights under this Act* ***whose rights it administers …".*** Thus, both Sections 34 and 35 draw a clear distinction between the author/ owner of the right on the one hand and the administrator of that right on the other (i.e. the copyright society).

144. The decision relied upon by Mr. Khambata on behalf of Novex namely ***"Entertainment Network India Ltd. v. Super Cassette Industries Ltd"*** (Supra) is apposite. The Supreme Court has held that Chapter VII was incorporated into the Act so as to enable an author to commercially exploit his intellectual property through a Copyright Society. The Supreme Court holds that as per the Section 34 of the Act, a Copyright Society is a virtual agent authorized to act on behalf of the owner. Paragraph 66 of the said decision reads as under:

> *"66. …It may, however, be of some importance to note that Chapter VII deals with Copyright society, the concept whereof was incorporated in the Act so*

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> *as to enable an author to commercially exploit his intellectual property by a widespread dispersal in a regulated manner. It for all intent and purport steps into the shoes of the author.* ***The society grants license on behalf of the author****, it files litigation on his behalf, both for the purpose of enforcement as also protection of the enforcement of his right. It not only pays royalty to the author but is entitled to distribute the amount collected by it amongst its members. Section 34 providing for administration of rights of owners by a copyright society for all intent and purport* ***creates a virtual agency so as to enable the society to act on behalf of the owner…".***

145. Thus, this decision of the Supreme Court makes it clear that Chapter VII does not take away the rights of the author/ owner. It only gives a choice to the author/ owner to either exploit its copyright on its own or to exploit its copyright through a Copyright Society. The idea of a Copyright Society is to assist the owner and not take away rights from an owner.

146. This is further made clear by Delhi High Court in "***Phonographic Performance Ltd. vs Lizard Lounge & Ors".*** *(supra)* which has also been relied upon by Mr. Khambata on behalf of Novex. The Delhi High Court has held thus:

> *"the* ***owner continues to simultaneously have rights to deal with his Copyright*** *in the work…*

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> *25.....<u>The Copyright Society is an agent appointed under the agreement by the owner of the Copyright</u> and specific powers have been conferred on the agent to institute legal proceedings.* However, this does not denuding the author of its own individual rights".

147. The function of a Copyright Society has been highlighted by Copinger at Page 1540 which has been relied upon by Mr. Khambata for Novex, wherein copyright society is referred to as a collecting society. Collecting societies provide a service to enable rights owners to enforce and administer certain of their copyrights effectively and cheaply, and secondly to provide a service to users by facilitating access to copyright works and making it possible for users to comply with their obligations under the law to obtain licences for the use of copyright works. Advantages of collecting societies has also been mentioned. Collecting societies are *practically, economically and legally both viable and essential: Practically,* because copyright owners cannot be in an indefinite number of places at the same time exercising individual rights. Further, "collecting administration bodies provide *the best available mechanism for licensing and administering copyrights and is to be encouraged* wherever individual licensing is not practicable. They represent the best means of protecting the rights owners' interests", enabling copyright owners to license and monitor the use of their works, to collect and distribute together and to bring

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actions for infringement. At the same time, they facilitate access to copyright protected works for the consumer and minimize the number of persons with whom users must negotiate licensing contracts.

148. I am of the considered view that Section 33 (1) of the Act cannot curtail the power of the owner to grant any interest in the copyright by license under Section 30 of the Act. This provision has not at all being denuded by the 1994 Amendment, which has brought in Chapter VII in the Act.

149. I do not find any merit in the interpretation placed by the Defendant that "no person" in Section 33(1) includes an "owner" of copyright and therefore even an "owner" of copyright cannot commence or carry on the business of granting copyright licenses. If such interpretation is accepted, Section 33(1) of the Act would take way the power of owner and / or the right of the owner to grant any interest in the copyright by license. This would emasculate right of the owner under Section 30. This was not contemplated by the Parliament by way of the 1994 Amendment Act. In my view, Chapter VII which deals with copyright society is operating in a different field than that of Chapter VI which is the source for granting of licenses by the owner of copyright.

150. It is a settled rule of Interpretation that two apparently conflicting provisions operating in two different fields should be reconciled by restricting each to its own object

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or subject. This has been expressly held by Supreme Court in "***K.M. Nanavati v. State of Bombay***" [41]. I find much merit in the interpretation placed by counsel on behalf of PPL and Novex that the prohibition as contemplated under Section 33(1) is on carrying on business of licensing by a person or association of persons in its own name for works in which "others". hold copyright. This has also held by this Court in Leopold Cafe and Stores and Anr. (supra). Thus in other words carry on "business' of granting licenses can be authorised to an agent such as a copyright society under Section 30 read with Section 18, 19 and 34 of the Act.

151. Further, the heading of Section 33 is "Registration of copyright society" and which could only mean that where a copyright society wants to carry on the business of issuing licenses on behalf of "others", then it must do so as per the provisions of Section 33. This is all that the section contemplates. It cannot purport to curtail the owner's right to license given under Section 30 falling in Chapter VI of the Act.

152. The Interpretation placed on "business" in Section 33(1) of the Act by learned counsel on behalf of the Defendants by referring to Rule 2(c) of the Copyright Rules, 2013 which defines '*Copyright Business*' is in my view misconceived. This definition is in wide terms although it also references sub-section (3) of Section 34, which deals with functions that a copyright society may perform qua works of others. However, if

41 AIR 1961 SC 112 (Para 77(1)) *(Sr. No. 41/ Page 737, Volume IV of Defendant's Compilation).*

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the term "business" is given the wide meaning, then, there would necessarily be a conflict between Sections 30 and 33 of the Act. The definition in Rule 2(c) in any event applies only to the rules and it cannot be applied to interpret Section 33(1), a provision of the primary statute and one that came 19 years before Rule 2(c). Further, the Rules are a piece of subordinate legislation. They cannot be considered to control the provisions of the Act especially if they cause conflict or absurdity in reading of the substantive provision of the Act.

153. Much has been said by the counsel for the Defendants that Section 33 of the Act is a later provision and prevails over Section 30 of the Act. I find in "***K.M. Nanavati'*** *(supra),* the Supreme Court has treated the rule of the later provision as one amongst a basket of rules which must operate together with other rules and which moderate and temper each other. Further, the Supreme Court has held that if there is a conflict between two provisions of a statute then it has to be determined which is the **leading provision** and which is the subordinate provision and which provision must give way to the other. I find that from the two provision viz. Sections 30 and 33(1) of the Act, Section 30 is the leading provision which is the source of power i.e. licensing rights conferred rights upon an owner . Section 33(1) does not deal with owner's right of licensing.

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154. Although, there have been arguments on the First Proviso and Second Proviso to Section 33(1) of the Act as well as reference to the legislation of 2012 Act as well as parliamentary debates and Speeches on this legislation, these provisos are inapplicable to the present case. The Second Proviso is confined to authors of underlying works which requires protection and thus inapplicable to the present case which concerns the owner of sound recordings. The Second Proviso to Section 33(1) in fact **militates against** the interpretation sought to be propounded on behalf of the Defendants. By amending section 33(1) in 2012 i.e. by adding the second proviso it would show that the Parliament itself did not contemplate that Section 33(1) barred every owner of a copyright from carrying on the business of licensing his works. Thus, the business of issuing or granting licence in respect of literary, dramatic, musical and artistic works incorporated in a cinematograph films or sound recordings shall be carried out only through a copyright society duly registered under the Act. Hence, it cannot be accepted that the Second Proviso to Section 33(1) of the Act is clarificatory.

155. The Madras High Court in ***"Novex Communications vs DXC Technology Pvt Ltd".*** *(supra)* has in my view overlooked Section 30 of the Act where the owner has a right to grant any interest in the copyright by way of license. The Madras High Court has applied the second proviso of section 33(1) of the Act to the right to communicate the sound recordings to the public, although such right does not fall within that proviso. The second

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proviso as mentioned is confined to underlying works. Further, the Madras High Court has held that Novex is not entitled to issue licenses which according to the Court falls into the second proviso after considering legislative history and speeches in parliament. However, no reason has been provided as to how the licenses in respect of sound recording is covered by the second proviso to section 33(1).

156. Thus in my view the Madras High Court has not considered Section 33(1) in light of other provisions of the Act namely Section 30 read with Section 18 and 30 of the Act which enables the Plaintiff- Novex as owner to grant licenses to the public.

157. In my considered view carrying on business of granting licences cannot be excluded from section 30 of the Act, particularly when such granting of licenses is by the owner of the copyright. The word “business” would include the grant of Licenses. If the interpretation of the Defendants on business is to be accepted then in that case 99% of the ownership rights would be taken away and the only right left with the owners would be to license its rights for philanthropy. Thus, this interpretation of the Defendant cannot be accepted.

158. The decisions on business relied upon by the Counsel on both sides only support the above view.

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159. The first proviso of Section 33(1) of the Act only recognizes the right of an owner to grant licenses even after such owner becomes a member of a registered Copyright Society. The first proviso has nothing to do with granting of Licenses by an owner of copyright under section 30 of the Act. If a member of the copyright society can grant license surely a non-member cannot be prevented from licensing his own works. Thus, the first proviso to Section 33(1) cannot in any manner prevent a non member from exercising his rights under Section 30 of the Act.

160. It appears from the argument of Dr. Tulzapurkar on behalf of Defendant that a distinction has been drawn between the granting of individual licenses by the owner and the carrying on of business of granting licenses by the owner which makes section 33 (1) applicable. I find no merit in this argument, particularly in view of aforementioned findings that Section 30 of the Act confers the power on the owner to grant any interest in the copyright by license which in my view would encompass an owner carrying on business of granting licenses in respect of works in which he has copyright. Thus, there would be no fetter on the owners rights under Section 30 of the Act by Section 33(1) of the Act which falls under a separate chapter. Thus, in my view it is not necessary for PPL and Novex as owners/assignees of copyright to be registered as copyright societies for carrying on the business of granting licenses of their works.

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161. Merely because PPL was at one time registered as a copyright society will make no difference to the above findings as PPL is granting Licenses as an owner and thus entitled under Section 30 of the Act to grant its interest in the copyright by license. Further, it will not make any difference that Novex is carrying on the business of granting licenses of their works as there is no restriction placed on an owner to grant any interest in the copyright by License. Thus, in my view the power under Section 30 to grant license by an owner has in no manner been denuded by section 33(1) of the Act. Accordingly, PPL and Novex as owners of copyright in respect of their works are entitled to file the present suits and seek reliefs sought for therein.

162. The above findings will also apply to those Suits where PPL and /or Novex are exclusive Licensees as Section 54 of the copyright Act, provides that an 'owner of copyright' includes an 'exclusive licensee'.

163. I further find no merit in the submission of Dr. Tulzapurkar on behalf of Defendant that the cause of action in the above suits is on an illegal act or amounts to transgression of a positive law as the plaintiffs have been generally assigned the business of granting licenses which activity they seek protection without having themselves registered as copyright society and thus violative of the statutory protection in Section 33(1) of the Act. The decisions relied upon on the well settled principle of of

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ex turpi causa non oritur actio or *ex dolo malo non oritur actio* are inapplicable in the present case. This is in view of my finding that PPL and Novex have the power as owners to grant interest in the copyright by license under section 30 of the Act irrespective of whether they are carrying on the business of granting licenses or not. Further, there is no bar under section 33(1) of the Act from an owner carrying on the business of licensing, or collecting license fees. Accordingly, I do not find that the Assignment Agreements and/or Exclusive License Agreements are illegal as contended on behalf of Defendants.

164. *Prima facie*, I find that there is much merit in the submission on behalf of PPL and Novex that the above suits have been filed against the Defendants who are rank infringes as they have failed to obtain a license in respect of the works which they are exploiting. The present suits concern whether PPL and Novex are exclusive owners of the copyright and whether they have a right to prevent infringement of their exclusive copyright. This in my view would be irrespective of whether or not these is a bar under Section 33(1) of the Act preventing them from carrying on business of issuing licenses in respect of their copyright. In the event it is held that PPL and Novex are exclusive owners of the copyright then it would follow that the Defendants have to be prevented from infringing the copyright.

165. Accordingly, the issue as to whether PPL and Novex as Plaintiffs in the above suits are entitled to seek reliefs as

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sought for in the plaint without being registered as a copyright society under section 33(1) of the Act is answered in the affirmative.

(R.I. CHAGLA, J)

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