

# The show must not go on

A court recently restrained an unregistered copyright society from issuing licences on a late Ghazal singer's music. Lucy Rana and Tulip De of SS Rana & Co report

In a recent case entitled *Chitra Jagjit Singh v the Indian Performing Rights Society (IPRS) and others*, the Delhi High Court restrained the IPRS from issuing licences with regard to the musical works of the late Jagjit Singh, a renowned Indian Ghazal singer who passed away in 2011.

A concert was to be organised by Panache Entertainment and the IPRS at the Siri Fort Auditorium in New Delhi on 18 March 2016, in memory of the late and renowned Jagjit Singh. The concert, however, was entitled 'Ek Ehsaas Jagjit Singh Live in Concert' and had taglines to the effect that Jagjit Singh "sings again for charity". The advertisements gave the overall misleading impression that the late singer would be performing live whereas, in reality, extracts from his various live performances were going to be played along with the live band that had played alongside him for more than two decades. Aggrieved by this, the late singer's widow, Chitra Jagjit Singh, filed the present suit.

The main contentions of Chitra Jagjit Singh were:

The advertisements for the show gave the misleading impression that Jagjit Singh would perform live, whereas the event would be using Jagjit Singh's voice and images from previous concerts.

The IPRS was not competent to grant licences for the works, in which the plaintiff claims copyright as her own works and the works produced by Jagjit Singh in respect of which she has obtained letters of administration from the Bombay High Court. The attention of the court was drawn to Section 33(1) and Section 33(3A) of the Indian Copyright Act of 1957, and also to the letter written by the IPRS to the Indian government in which the copyright society claimed that it was no longer a registered copyright society within the meaning of the act as its registration had lapsed in 2013 and it had failed to get a new registration certificate.

As a result, the IPRS continued to issue licences even though it was no longer a copyright society registered under the Copyright Act.

Further, the plaintiff had not received any royalties from the IPRS or the event organiser for a similar concert previously held in Mumbai, for which the IPRS had collected a fee of INR 49,140 (\$740).

Agreeing with the plaintiff, the Delhi High Court restrained the IPRS from granting any licence in respect of the works of the plaintiff and Jagjit Singh, and from recovering any licence fee from any third party in respect of the works. The order was passed *ex parte* with no representation from the defendants.

Subsequently, following representation from the defendants, the Delhi High Court considered the fact that the show was already booked, tickets were in fact sold out, and it was being held for charity. The Delhi High Court directed the defendants to discontinue their misleading advertisements, and stop using the name and picture of Jagjit Singh, much less portraying him to be "live in concert". The court also told the event organisers to deposit an amount of INR 500,000 (\$7,530) to secure the rights of the plaintiff on or before the date of the concert. The defendants

were also directed to not hold any similar concerts in the future without prior permission of the court.

The case is a landmark one in the sense that the court has considered the incompetency of the IPRS in issuing licences and recovering license fees in respect of musical works. It was imperative for this to be clarified, as the 2014 Novex Communications decision of the Bombay High Court had still left some room for unregistered societies, if they could prove that they were acting as an agent, by holding that a 'duly authorised agent' under Section 30 of the Copyright Act of 1957 would not be hit by the prohibition under Section 33 of the act.

That provision states that no person or association of persons shall commence or carry on the business of issuing or granting licences in respect of any work in which copyright subsists or in respect of any other rights conferred by the act, except under, or in accordance with, the registration granted under the act.

The ultimate repercussions in the *Chitra Jagjit Singh* case, with regard to the competency of the IPRS, are yet to be seen. **IPPro**



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