

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1131 OF 2013
IN
SUIT NO. 594 OF 2013

Patidar Swajan	...Plaintiff
<i>Versus</i>	
Khushali Productions & Punita Hirani	...Defendants

Ms. Manorama Mohanty, with Mr. A.P. Singh, i/b M/s. S.K. Srivastava & Co., for the Plaintiff.
Mr. Harindar Toor, with Ms. Jyotsana S. Kondhalkar, i/b Vigil Juris, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 4th April 2016

PC:-

1. Mr. Toor for the Defendants insists that the suit is entirely false, vexatious and an abuse of the process of the Court. He may not be wrong. At the very least, the suit, one that seeks relief in copyright and trade mark infringement and associated reliefs, is thoroughly misconceived. There is no question of any interim relief in a matter such as this. My reasons follow.

2. The Plaintiffs are an unregistered Association, though the record indicates that they they have at various times described

themselves wrongly (and perhaps deliberately wrongly) as a Charitable Trust. This they admittedly are not. The Plaintiffs claim to be the ‘absolute owner’ of copyright in the script, music, songs, lyrics and all other ancillary intellectual property rights in respect of a Gujarati dramatic work and musical on Radha & Krishna titled ‘Sathvaro Shri Radhe Shyamno’. In the plaint, the virtues of this performance are mightily extolled, though for what reason I am unable to tell.

3. It is difficult to understand from the plaint or from the Notice of Motion of what it is precisely that the unregistered Association claims authorship. At different times different things are said. For instance, the plaint proceeds on the footing that this unregistered swajan is the owner of copyright in the entire production. That simply cannot be. The unregistered association is not the author of the dramatic work. It is not even its producer, though that would make no difference in respect of a dramatic work. Under the provisions of the Copyright Act, a dramatic work is distinctly defined. In addition, by definition, the author for the purposes of the Copyright Act, in relation to a literary or a dramatic work, and this is by the Plaintiffs’ own admission a dramatic work, is the author of that work. Now, Section 17 of the Copyright Act defines the first owner of copyright. In regard to an dramatic work this is covered by proviso (a) read with proviso (c) of Section 17. It is clear that as regards a dramatic work, the Plaintiff cannot be the first author of that work. It is not the Plaintiffs’ case anywhere that the Plaintiffs were the employers of any person who is the author of this dramatic work.

4. In any case, to acquire an assignment of copyright, the Plaintiffs will necessarily have to show that there is an assignment in writing in their favour as required by Section 19 of the Copyright Act. Even this they are not able to do.

5. What is shown to me in a compilation tendered today is an extract from the Register of Copyrights. Far from assisting the Plaintiffs, this makes matters considerably worse. The extract has several incorrect statements: not once but four times the Plaintiffs have described themselves as a Charitable Trust. It is an admitted position that they are not a Charitable Trust and have never have been. What copyright exists is supposedly in respect of “an artistic work”. It is obvious that the copyright in an artistic work is distinct from the copyright in a dramatic work. The two are not the same. What the Plaintiffs now claim from this compilation is that they have a copyright in respect of an artistic representation of a poster or a label which is shown at page 2 of the compilation.

6. Even this is incorrect. As an unregistered Association or a Samaj, the Plaintiffs cannot possible collectively be artists or ‘an author’ for the purposes of the Copyright Act. The only way in which an Association could have acquired rights, even assuming that an unregistered body can ever acquire such rights, would again be by way of a written assignment from the artist/s. There is no such assignment. I have asked for it twice. None is shown. I am told that there is in fact no such written assignment. This entire claim to copyright in the dramatic work based on these documents at pages 1 and 2 of the compilation is clearly untenable.

7. I am then told that the Plaintiffs have a “trade mark”. This is even more puzzling. I did not know that one could have a trade mark in a dramatic work. What the Plaintiffs claim is a label mark under Class 41, again for the same artistic label. It is not the Plaintiffs’ case in the plaint that their artistic label is in any way being infringed. In fact the trade mark registration is not obtained by the Association but by one Mr. Bhargav Patel and Mr. Atul Patel claiming to be the Trustees of the Charitable Trust. Even this statement is false.

8. The case in the plaint specifically is that the 2nd Defendant and 1st Defendant are conducting and putting up rival performances of a dramatic work in which the Plaintiffs claim to have proprietary rights. In order to succeed, the Plaintiffs would necessarily have to show that they are the first owners or the authors of copyright in that dramatic work. This needs to be done in an established manner in accordance with the provisions of the Copyright Act. It cannot be done merely by making assertions of being “an absolute owner”.

9. The defence as placed by Mr. Toor is that it is the 2nd Defendant herself who was the choreographer and who conceived the entire production in the first place. Copyright vests in her. She was not ever employed by the Plaintiffs’ association for this purpose. The Plaintiffs’ association was at best an organizer or a host or a sponsor of those production. If there is a person who has copyright in the production, therefore, in Mr. Toor’s submission it is the 2nd Defendant and not the Plaintiff.

10. As regards the name of the production, Mr. Toor relies on the recent decision of the Supreme Court in *Krishika Lulla & Others v Shyam Vithalrao Devkatta & Anr.*¹ for the proposition that there can be no valid claim of copyright in a mere title. This submission is well-founded. He also relies on the decision of the Supreme Court in *Academy of General Education, Manipal & Anr. v B. Malini Mallya.*² This makes it abundantly clear that a dance performance falls within the purview of a dramatic work and is not a literary work.

11. In this view of the matter, it is difficult to see what kind of *prima facie* case can be said to have been made out by the Plaintiffs. Indeed, as far as I can tell, they have no rights whatsoever in the work in question. None are shown to me. It is extremely doubtful whether they can in fact as an unregistered Association lay claim to any such exclusive or proprietary rights. The entire Suit is actually misconceived and without a demonstrable cause of action.

12. It seems, however, that an ad-interim order was obtained *ex parte* on 20th March 2013. That order has continued till today. To that extent, Ms. Mohanty for the Plaintiffs may be right in saying that the ad-interim order should be continued for a short while if this Notice of Motion is being dismissed.

13. This Notice of Motion is indeed being dismissed. The only question is one of costs. Mr. Toor presses for costs rather vehemently. His entreaties are rebuffed equally firmly.

¹ (2016) 2 SCC 521

² (2009) 4 SCC 256

14. The Notice of Motion is dismissed, but with no order as to costs.

15. The ad-interim order granted on 20th March 2013 shall continue to operate for a period of four weeks from today.

(G. S. PATEL, J.)