

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2016

Verdict on : 08.09.2016

CORAM:

THE HONOURABLE MR.**JUSTICE M.M.SUNDRESH**

C.S.No.93 of 2012

Mr.Thiagarajan Kumararaja,
aged about 34 years
S/o K.Thiagarajan,
residing at No.6, Third Street,
R.E.Nagar, Porur,
Chennai-600 116.

.. Plaintiff

Vs

1.M/s Capital Film Works (India) Pvt. Ltd.,
Having its Registered Office at
16, Kamdhar Nagar Third Street,
Mahalingapuram, Nungambakkam,
Chennai-600 034.
Represented by its CEO., Mr.S.P.Charan.

2.Mr.S.P.Charan,
CEO, Capital Film Works,
Having his office at:
16, Kamdhar Nagar Third Street,
Mahalingapuram, Nungambakkam,
Chennai-600 034.

.. Defendants

Civil Suit is filed under Order IV Rule 1 of the Original Side Rules, 1956 read with Order VII Rule 1 C.P.C and Sections 55 and 62 of the Copyright Act, 1957, for a decree of permanent injunction restraining the defendants 1 and 2, their agents, officers, servants and representatives,

franchisees and all others in the capacity of principal or agent acting for and on their behalf from translating the script “Aaranya Kaandam” in to any language, making any new cinematograph film that is based on the script “Aaranya Kaandam”, incorporating any translated version of the script “Aaranya Kaandam” as part of any new or existing cinematograph film or doing any other act inconsistent with the rights conferred on the plaintiff under section 14(a) of the Copyright Act 1957; and for the costs in favour of the plaintiff.

For plaintiff : Mr.Vadivelu Deenadayalan for
M/s Kavitha Deenadayalan

For defendants : Mr.Sathish Parasaran, S.C., for
Mr.M.V.Swaroop.

JUDGMENT

Suit has been filed for a decree of permanent injunction restraining defendants 1 and 2, their agents, officers, servants and representatives, franchisees and all others in the capacity of principal or agent acting for and on their behalf from translating the script “Aaranya Kaandam” in to any language, making any new cinematograph film that is based on the script “Aaranya Kaandam”, incorporating any translated version of the script “Aaranya Kaandam” as part of any new or existing cinematograph film or doing any other act inconsistent with the rights conferred on the plaintiff under section 14(a) of the Copyright Act 1957; and for the costs in favour of the plaintiff.

2. The case of the plaintiff is as follows:

The plaintiff is a script writer. The Plaintiff approached the defendants for producing a movie. Initially, the defendants evinced interest in the project. There was an understanding between the parties that in the event of the plaintiff unable to find any other producer till January 2008, the first defendant would have a re-look to take up the project of producing a movie. The plaintiff was unable to strike a deal with others. Thereafter, the parties to the suit agreed to go ahead with the production of the movie. The plaintiff became the Director of the movie "Aaranya Kaandam". As per the agreement, the plaintiff can get remuneration only for his performance as Director and for having his associates. He will not be paid any money for his literary work. It is a one time licence for the production of the movie qua his copyright literary work. The movie was released in the year 2010. The plaintiff registered his script with the Film Writers' Association, Mumbai, in the year 2010. Thereafter, the plaintiff came to know that the defendants had initiated steps to release the film in Andhra Pradesh after dubbing the same in Telugu. The plaintiff did not give any permission for using his copy right literary work for the aforesaid purpose. Thus, the present suit is filed praying for permanent injunction inter alia alleging violation of Sections 13 and 14 of the Copy Right Act, 1957, on the part of the defendants since there is no agreement between the parties for such an

assignment.

3. The case of the defendants is as follows:

The sale consideration paid, as evidenced by the production budget, duly signed by the plaintiff would cover the literary work of the plaintiff also. Thus, there is a sale of the literary work in favour of the defendants. Having received the payments, it is not open to the plaintiff to contend to the contrary and thus, there is no bona fides in the suit filed. Under the Copy Right Act, 1957, a producer would become an Author qua a cinematograph film. The definition to Clause 2(f) of the Copy Right Act includes any work as defined under Sections 13 and 14 of the Copy Right Act, 1957. The defendants are the copy right holders of the film. For the assignment, no particular form is necessary. Hence, there is no infringement of the copy right.

4. After hearing the parties, the following issues were framed by this Court on 15.04.2013:

“1. Whether dubbing the Tamil cinematograph film “Aaranya Kaandam” into Telugu or any other language constitutes an infringement of the plaintiff's right under the Copyright Act, 1957 and particularly, Section 14(a) thereof?

2. Whether remaking the Tamil Cinematograph film “Aaranya Kaandam” in Telugu or any other language

constitutes an infringement of the plaintiff's rights under the Copyright Act, 1957, and particularly Section 14(a) thereof?

3. Whether the plaintiff/Director has any right to stop or interfere with the defendants, who are the producers of the cinematograph film “Aaranya Kaandam” from dubbing remaking and doing any other activity in view of the admitted fact that the plaintiff has not entered into any agreement, as per Section 17 Proviso (b) with the defendants to restrain the Defendants from performing any activity whatsoever in relation to the movie?

4. Whether sub clause (d) of Section 14(1) of the Copyright Act is the only relevant Section, under Section 14, in relation to a cinematograph film?

5. Whether the plaintiff is entitled to permanent injunction as prayed for in the plaint?

6. To what relief the plaintiff is entitled to?”

5. Initially, an order of injunction was granted by this Court. On notice, it was vacated. A challenge was made by the plaintiff before the Division Bench of this Court and it was also rejected. The matter was further taken to the Apex Court. Without interfering with the orders passed, the Special Leave Petition was disposed of with a request to dispose of the suit in a time bound manner. In the said order, it was also made clear that

the interim order passed will not have an effect in the disposal of the suit

and the question of law raised is left open. Thereafter, evidence was taken and after completion of pleadings, the matter stands posted before this Court.

6. The plaintiff examined himself as P.W.1. He has marked Exs.P1 to P3 as documents. Two witnesses have been examined on behalf of the defendants. The defendants have marked Exs.D1 to D5. Ex.D5 is the letter given by the Tamil Nadu Producers Council stating that the producers have exclusive ownership over the copy right of the film and in the absence of any written agreement, there is no question of payment of amount to script writer while dubbing the film in other language. It has also been stated that this has been the practice over the years. The other documents filed are with respect to the expenses and accounts pertaining to the movie.

7. Ex.D3 is the budget document evidencing budget amount for the movie, which is inclusive of payment made to the Director for production of the movie for a sum of Rs.7,00,000/-. This is signed by the

parties to the suit.

8. The learned Counsel appearing for the plaintiff made the following submissions:

There is no written agreement between the parties and there cannot be any assignment in the eye of law. Admittedly, the script belongs to the plaintiff. The said script is a copy right literary work. No permission has been obtained from the plaintiff for using it in other languages. There is no difference between a dubbing and the translation. The proposed act would amount to a new cinematograph film and for that, the plaintiff ought to have obtained either a licence or an assignment afresh from the plaintiff. There is no consideration for usage. The order passed in the interlocutory application cannot be termed as a binding precedent either on fact or on law. Reliance has been made on the definition clause contained under Section 2 read with Sections 13, 14 and 15 of the Copyright Act, 1957 for the contentions aforesaid.

9. Submissions of the learned Senior Counsel for the Defendants:-

There is no cause of action involved. The plaintiff has not come with clean hands. Ex.A3 would reveal that entire consideration has been paid

which is inclusive of value for the copyright claim. A cinematograph film certainly involves a copy right of an assignment. The defendants are the authors, being the producer of the cinematograph film “Aaranya Kaandam”. As per Sections 13 and 14 of the Copyright Act, 1957, they are entitled to communicate the film to the public as the copy right subsists. The definition of communication to the public under Section 2(ff) is very wide touching upon any work. Section 13(4) has to be read not to affect a copyright in a cinematograph film. Ex.P3 having been signed, it clinches the issue against the plaintiff. There is no reason for giving licence though claimed to be a one time. Therefore, the suit has to be dismissed.

10. Discussion:-

10.1. A script is a written text of a movie. Therefore, it is different from the story and the screen play though there is an element of overlapping. Similarly, the dubbing is different from translation. A dubbing is meant to provide a film with a sound track with a different language from the original. In dubbing, what is important is the lip movement. Thus, no verbatim translation is possible in an activity of dubbing.

10.2. Under the Copyright Act, 1957, both a literary work and a

cinematograph film would come under its purview and thus, entitled for protection. They both operate on different fields. They are not meant to be seen in conflict with each other. A copyright of cinematograph film shall not affect the separate copyright of a work, which forms part of it. Section 2(d) of the Act includes a producer of a cinematograph film in a definition of an author. Thus, a producer of a cinematograph film is an author entitled for protecting his copy right.

10.3. Coming to the facts involved in this case, admittedly, the plaintiff was the copyright owner of the script, which was used for making the film "Aaranya Kaandam". He was also made as a Director of the movie. The defendants 1 and 2 are the producers. The plaintiff was admittedly paid the remuneration. While it is a case of the plaintiff that for his copyright, he was not paid any remuneration and he has given only a licence being one time, the defendants contend that it amounts to sale of the script in their favour in pursuant to the consideration paid for a sum of Rs.7,00,000/- which includes the payment as Director and his associate Assistant Director. Ex.P3 is not in dispute, which specifically says that a sum of Rs.7,00,000/- has been paid. If it is the case of the plaintiff that a licence alone was given in favour of the defendants, he has to establish the same with the reason behind it. He has to establish as to whether such a

permission is a gift and if not, why not supported by any consideration. If it is to be taken that he has given up his right, so as to act as a Director, then it cannot be termed as a one time licence. There is no material available to show that what was done was by way of a one time licence or permission. There is no question raised as to why the so called consideration has not been included in Ex.P3. Thus, this Court comes to the conclusion that Ex.P3 includes the value for the literary work of the plaintiff leading to assignment in favour of the defendants. Therefore, there is sufficient compliance of Section 19 of the Copyright Act, 1957.

10.4. Ex.P3 has to be seen in the light of Ex.D5, which is the letter given by the Tamil Nadu Producers' Council dated 07.08.2014. It speaks about the general practice being followed. Though the plaintiff is not a party to the letter, Ex.D5, it throws much light on the circumstances which prevailed at the relevant point of time. The plaintiff has made the registration before the Film Writers' Association, Mumbai, in December, 2010. This was obviously subsequent to the completion of the work for the movie. It has to be borne in mind that the plaintiff was a Director of the movie and therefore, it cannot be contended that he has been kept in dark.

10.5. Coming to the evidence of P.W.1, it has been stated by him that the object of dubbing is to make more money, which is clear from his own evidence that the movie was commercially not a success. From his evidence, it is further seen that the defendants received a National Award from the Government of India for the movie “Aaranya Kaandam” in which a chance was given to the plaintiff as Director while making the movie. It is not in dispute that the movie was released in different parts of the country. As per Section 13, the copy right shall subsist throughout India. Now, there is no dispute on the copy right for the film in favour of the defendants. Therefore, the plaintiff has to prove with clinching evidence that his copyright for the literary work still subsists notwithstanding the copyright given in favour of the defendants. This Court is afraid that the plaintiff has not established the said factum with acceptable evidence to the satisfaction of this Court. The plaintiff has not even substantiated his contention that he has given a permission by way of a one time licence as could be seen from the evidence, it is a case of assignment on receipt of the consideration.

11. Conclusion:-

In those circumstances, this Court is of the view that issue Nos.1 to 4 are to be answered against the plaintiff as there is no infringement on the

part of the defendants under Section 14 of the Copyright Act, 1957. Consequently, the plaintiff is not entitled for the relief as sought for under issue No.5. Accordingly, the suit stands dismissed. No costs.

08.09.2016

Index:Yes/No
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M.M.SUNDRESH,J.

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**Pre delivery judgment in
C.S.No.93 of 2012**

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