

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2017

DELIVERED ON : 20.11.2017

Coram

The Honourable Mr. Justice RAJIV SHAKDHER
and
The Honourable Mr. Justice ABDUL QUDDHOSE

Original Side Appeal No.22 of 2017

Mr. Thiagarajan Kumararaja ... Appellant/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.

2. S.P. Charan ... Respondents/Defendants

Prayer : Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, against the Judgement and Decree dated 08.09.2016 in C.S.No.93 of 2012, on the file of this Court.

For Appellant : Mr. M.V. Swaroop

For Respondents: Mr. Vadivel Deenadayalan
for Ms. Kavitha Deenadayalan

J U D G E M E N T

RAJIV SHAKDHER, J.

1. This appeal is directed against the judgement and decree dated 08.09.2016, passed in C.S.No.93 of 2012, by the learned Single Judge.

1.1. The learned Single Judge via the impugned judgement, has dismissed the suit, filed by the appellant, i.e. the plaintiff.

1.2. The appellant has filed the suit for permanent injunction against the respondents / original defendants. Respondent No.2 / defendant No.2 is the Chief Executive Officer of respondent No.1 / defendant No.1.

1.3. The reliefs prayed for by the appellant in the suit were, to pass a decree of permanent injunction against the respondents, their agents, officers, servants and representatives, franchisees and all others acting in the capacity of principal or agent for and on their behalf from (a) translating the script of the film "Aaranya Kaandam" into another language; (b) making a new cinematograph film based on the script "Aaranya Kaandam"; (c) incorporating any translated version of the script "Aaranya Kaandam" as part of a new or existing cinematograph film; and (d) doing any other act inconsistent with the rights conferred on the appellant/plaintiff under Section 14(a) of the Copyright Act, 1957 (in short '1957 Act'). Apart from this, cost were also sought by the appellant.

1.4. As would be evident from a perusal of the prayers referred to above by us, the dispute between the parties centres around the rights in the film "Aaranya Kaandam".

2. In order to adjudicate upon the dispute inter se the parties, the following broad facts are required to be noticed:

2.1. It is the stand of the appellant that in and about 2006, he wrote the script of the film "Aaranya Kaandam" and had it registered with the Film Writer's Association in Mumbai. It is asserted that upon registration, he was accorded a registration number being: No.R-18547. Reliance in this is placed on Receipt No.190597.

2.2. The appellant claims that he was looking out for producers, for conversion of the script into a film, which is when he met respondent No.2. It is averred that this meeting took place in and around May-June 2007. The pre-production work for making of the Tamil version of "Aaranya Kaandam", according to the appellant, commenced in and about July, 2007.

2.3. It is also claimed that between July - January, 2008, several other producers had expressed interest in producing a Tamil film, based on the script, written by the appellant. Nothing, according to the appellant, materialised as all such producers/production houses demanded transfer of entirety of rights in the script, which included derivative works, remakes and versions of films produced by them.

2.4. The appellant claims that all that he was interested

in was to grant a license to the producer to use his script for the limited purpose of making a cinematograph film in Tamil language alone.

2.5. It is the stand of the appellant that since respondents were busy with other films and engagements, a bound copy of the script of the film "Aaranya Kaandam" was handed over to respondent No.2 in February, 2008.

2.6. As per the appellant's version, shooting of the film "Aaranya Kaandam" commenced in December, 2008. The appellant further avers that, due to delay attributable to the respondents, as per the appellant's version, the production of the film was finally completed only on 25th May, 2010.

3. The appellant claims that while the film received excellent reviews from the critics and also won the Grand Jury Prize at the New York Film Festival, the film, did not do well commercially. The appellant claims that commercial failure of the film was on account of the producers i.e. the respondents not being able to provide wide publicity to the film.

3.1. The appellant claims that since he got to know in February, 2012, that the respondents were attempting to dub "Aaranya Kaandam" in Telugu, and also, perhaps, were wanting to remake and/or adapt the said film, albeit, without his prior consent, he was propelled into instituting the present suit.

3.2. The record shows that initial order of injunction was passed by the learned Single Judge on 29.02.2012. This order was passed in O.A.No.96 of 2012. However, on return of notice, based on an application, being A.No.1888 of 2012, moved by the respondents, the interim order of injunction was vacated.

3.3. The appellant carried the matter in appeal to the Division Bench which ended up with the same result. The appeal was dismissed vide judgement dated 04.07.2012.

3.4. The appellant carried the matter further, in appeal, to the Supreme Court. The Supreme Court vide order dated 31.10.2012, disposed of the appeal with the following observations:

"Considering the fact that the Suit is still pending before the Madras High Court, we are inclined to dispose of the special leave petition, with a request to the High Court to dispose of the Suit, uninfluenced by the observations made by the High Court, as expeditiously as possible preferably within a period of three months from the date of

receipt of this order.

The respondent would file written statement before the High Court within a period of two weeks from today, failing which appropriate orders can be passed by the High Court.

We make it clear that we are not expressing any opinion on the various contentions raised before us. The question of law raised, however, is kept open.

Needless to say, interim order passed by the High Court will have no effect while disposing of the matter."

4. It appears that there upon a written statement was filed by the respondents, wherein, broadly, the following stand was taken:

(i) The respondents were producers of the film "Aaranya Kaandam" and that, they had the copyright in the film titled: "Aaranya Kaandam".

(ii) The producers, under the 1957 Act, were the first authors of the said film and therefore held the copyright in the film.

(iii) Dubbing was one of the rights conferred on the producers of the film under Section 14(d)(iii) under the 1957 Act, which was nothing but the right to communicate the film to the public as envisaged under the said provision.

(iv) The respondents had paid a total sum of Rs.7,00,000/- to the appellant, out of which, Rs.5,00,000/- was paid to him for the services rendered by him as director of the subject cinematograph film i.e., "Aaranya Kaandam" and the balance sum of Rs.2,00,000/- is paid as consideration for the script. The appellant being a debutant director was given an opportunity by the respondents to direct the film and show case his talent before a larger audience.

(v) Even though the subject film "Aaranya Kaandam" had won the Grand Jury Award and also three National Awards in 2011-12 for best editing, best debutant director and best producer for giving opportunity to a newbie director - it had failed commercially. It was never the intention of the appellant to make a film which was a commercial success. The respondents had, thus, suffered financial loss, which, they were trying to recoup by dubbing the subject cinematograph film i.e. "Aaranya

Kaandam" in Telugu.

(vi) That dubbing was not the same as translation. Translation occurs when literary work is translated from one language into another language. Such a situation does not obtain in case of the subject cinematograph film. The respondents, who are owners of the subject cinematograph film are not translating the literary work, but are instead only exercising and exploiting their exclusive right in the subject cinematograph film, which is, to communicate the same to the public at large throughout India in a manner that it can be understood and enjoyed by the people who speak a different regional language. Dubbing, thus, is nothing but an act of communicating a cinematograph film having the same negative print, albeit, in a different language.

(vii) The shooting was delayed as the appellant did not have a ready script. The appellant in fact kept amending the script everyday causing huge delay and immense financial loss to the respondents.

(viii) It is denied that the appellant granted one time permissive licence to the respondents to make a cinematograph film only in Tamil language. The appellant did not put in place any restrictions based on which it could be gathered that respondents could produce only a Tamil film.

(ix) The appellant had never expressed any intention that the respondents right in the subject cinematograph film were fettered.

5. Based on the broad stand reflected in the pleadings of the parties, the Court framed the following issues:

"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?"

5.1. In support of his case, the appellant examined himself and was identified as P.W.1. Furthermore, the appellant tendered three (3) documents which were marked as: Exhibits (Ex.) P1, P2 and P3.

5.2. In so far as the respondents are concerned, they examined two witnesses, who were identified as D.W.1 and D.W.2. The defendants on their part tendered five documents as evidence, which were marked as Exhibits (Ex.) D1 to D5.

6. The learned Single Judge, as indicated above, dismissed the suit based on the following findings / observations:

(i) That dubbing was different from translation. Dubbing is meant to provide a film with sound track which is different from the original.

(ii) In dubbing what is involved is the lip movement. Thus, no verbatim translation is possible in an activity involving dubbing.

(iii) Ex.P.3, which is a budget sheet which included the value for literary work i.e. the script written by the appellant, which was assigned in favour of the respondents.

(iv) This was so as the appellant had failed to establish that the sum of Rs.7,00,000/- was paid to him only for issuance of one time licence, and therefore, there was sufficient compliance of Section 19 of the 1957 Act.

(v) The appellant had failed to prove with the help of "clinching evidence" that copyright in the literary work still vests with him.

7. The appellant being aggrieved by the impugned judgement seeks to assail the same.

Submission of Counsels :

8. The arguments in support of the stand of the appellant have been advanced by Mr.M.V.Swaroop. In opposition, submissions have been advanced by Mr.Vadivel Dheenadayalan.

9. Mr.M.V.Swaroop, broadly, argued that there was no assignment of rights in the script and that the assignment of rights in the script could be carried out only in writing, as provided in Section 19(1) of the 1957 Act. Furthermore, it was submitted that, for a valid assignment of literary work to take place, the assignment must identify the work and specify the rights which are being assigned, along with their duration and territorial reach.

9.1. The budget sheet (Ex.P3), on which reliance is placed by the respondents does not advert to the script at all. The emphasis was, that if, budget sheet (Ex.P3) is to be considered as a piece of writing via which rights in the subject cinematograph film were assigned, then those rights should have been delineated in the budget sheet itself.

9.2. It was, thus, submitted that there was no assignment by conduct or by way of acquiescence in favour of the respondents as contended or at all.

9.3. It was further submitted that, even, if it is presumed that assignment did take place, it could only be construed as having been confined to the making of a Tamil cinematograph film. Furthermore, it was stressed that assuming without admitting that there was a general assignment of rights, the same lapsed at the end of five years, which is the period prescribed under Section 19(5) of the 1957 Act. In other words the argument was that there could be no copyright in the subject cinematograph film outside the bounds of 1957 Act.

9.4. Therefore, according to the counsel for the appellant, the learned Single Judge had committed an error in holding that the budget sheet (Ex.P3) constituted an assignment in law as there was substantial compliance of the provisions of Section 19 of the 1957 Act. The argument was, in effect, that sans assignment qua a literary work it is only the author of the work

who has the right under Section 14 of the 1957 Act, to make a cinematograph film.

9.5. The respondents cannot, according to the learned counsel, use the appellant's script to make another cinematograph film unless rights in the script are assigned, as prescribed under Section 19 of the 1957 Act, to the respondents.

9.6. Dubbing involves translation of the dialogues embedded in the film which emanates from the literary work, i.e. the script. The right of translation as provided under Section 14(1)(a)(v) of the 1957 Act vests in the person who holds the copyright in the literary work.

9.7. Section 14(1)(d) of the 1957 Act does not give the producers of the cinematograph film the right to translate the subject film by using the dubbing route. Section 2(f)¹ defines 'cinematograph film' as any work of visual recording along with accompanying sound recording.

9.8. Dubbing will involve fresh sound recording to accompany the visual recording, and thereby, would result in the creation of a new film. Since, there would be substantial similarity between the old and the new work (i.e. the Telugu version), it would result in violation of the appellant's copyright in the script.

9.9. Since, a dubbed film results in creation of a film separate from the original, the same cannot be done without the owner of the literary work licencing or assigning, the right to remake the film. Dubbing is not the same as communicating the film to the public as is envisaged under Section 14(1)(d)(iii) of the 1957 Act. The change in sound recording accompanying the visual recording, results in creation of a new film and thus violates the script writer's copyright.

10. Section 2(ff) of the 1957 Act¹ which defines the expression 'communication to the public' expounds, that it involves making of any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available. In other words, the provision only protects the right of the owner of the film to make the work accessible to the public via various modes, which are adverted to in that behalf. This right does not include the right to make changes to the work so that it is understood by a section of the society, as it would involve

¹ Amended via Copyright (Amendment) Act, 2012

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translation of literary or dramatic works without issuance of a licence or assignment of the right in the work.

11. In support of his submission, the learned counsel relied upon the following judgements:

- (i) PVR Pictures Ltd. Vs. Studio 18, 2009 (41) PTC 70;
- (ii) Fresh Trading Ltd. Vs. Deepend Fresh Recovery Ltd., Andrew Thomas Robert Chappell, (2015) EWHC 52 (Ch)
- (iii) Lalguid G.Jayaraman Vs. Cleveland Cultural Alliance, MANU/TN/2297/2008.
- (iv) Pine Labs Pvt. Ltd. Vs. Gemalto Terminals India Pvt. Ltd., 2011 (48) PTC 248 (Del.)
- (v) Star India Pvt.Ltd. Vs. Leo Burnett (India) Pvt. Ltd., 2003 (27) PTC 81 (Bom)
- (vi) R.G.Anand Vs. Delux Films, (1978) 4 SCC 118.

12. Mr.Vadivel Dheenadayalan, on the other hand, commenced his submission by contending that as a matter of fact, there was no script generated by the appellant. It was argued with much emphasis that all that the appellant had conveyed to the respondents was a story. Therefore, according to the learned counsel what was put on record before the Court was a screenplay and not a script. Given this circumstance, it was argued there could be no copyright of the appellant in the script, as there was none in existence.

12.1. The respondents were the producers of the subject cinematograph film, having taken the initiative and responsibility of creating the work. In this behalf, reliance was placed on Section 2(u) of the 1957 Act.

12.2. The respondents being the producers of the subject cinematograph film, in consonance with the provisions of Section 2(d) of the 1957 Act, they would be the authors of the subject cinematograph film.

12.3. The appellant having been paid a valuable consideration, for the script, which was converted into a cinematograph film at his instance, would vest in the respondents, that is, the owners, the copyright in the said film. In other words, the respondents being owners of the subject cinematograph film, they would be entitled to make use of, or exploit the rights in the film, in any manner that they deemed fit. In this behalf, reliance was placed on the provisions of Clause (b) of Section 17 of the 1957 Act.

12.4. Based on aforementioned provision, it was emphasised that the respondents had the right not only to re-make the

subject film but also to have it dubbed in a language different from the one, in which, it was, originally, made.

12.5. In the context of dubbing, it was contended that the respondents being the owners of the cinematograph film, they had the right under the provisions of Section 14(1)(d)(iii) of the 1957 Act to communicate the film to the public in the language of their choice.

12.6. In this context, reliance was also placed on Section 2(ff) of the very same Act, to establish that the expression "communication to the public" had a wide width and amplitude which allowed the owner of the cinematograph film to use means that would enable the public at large to enjoy the subject literary work. It was contended that this could be done directly or by any means of display or diffusion available to the producers other than by making use of physical copies of the same.

12.7. It was also submitted that registration of the subject film with the Film Writers Association was done after the subject cinematograph film had been made and therefore, in any event, would not confer any special rights on the appellant.

Reasons

13. After hearing the learned counsel for the parties, perused the records and the evidence, what has come to fore, is that, the subject cinematograph film is based on the story narrated by the appellant, in respect of which, the script and the screenplay was also authored by him.

13.1. The argument sought to be advanced, on behalf of the respondents, by Mr.Vadivel Dheenadayalan that there was no script in existence and that the subject cinematograph film was based on the story narrated by the appellant, is contrary to the stand taken by them, in their pleadings.

13.2. The respondents have, in fact, in the written statement, repeatedly adverted to the script authored by the appellant and have gone on to say that the sum of Rs.7,00,000/-, which they paid to the appellant, included the amount paid to him towards the script authored by him.

13.3. The respondents, as a matter of fact, categorically state that Rs.5,00,000/- was paid to the appellant towards directorial services while the remaining Rs.2,00,000/- was paid to him in respect of the script. Therefore, there can be no doubt with regard to the existence of the script or its authorship.

13.4. The respondents, however, have set up a case as, is borne out from the stand taken in the written statement, that they had a right in the script as well, since, the consideration paid envisaged assignment of rights in the script. Based on this stand, it was argued on behalf of the respondents, both before us and the learned Single Judge, that the respondents being the producers of the subject cinematograph film, they were its authors and therefore were authorised by law, to use and exploit their rights in the subject cinematograph film.

13.5. It was, specifically, contended that the respondents had not only the right to dub the subject cinematograph film into Telugu and other regional languages but also to remake and/or make other versions of the said film.

14. Before we proceed further, one would have to examine as to what are the various ingredients which go into the making of a film and what are the rights, which the creator or author of the ingredient has, and whether these rights continue to subsist independently of the final product, which is the cinematograph film.

14.1. A film would ordinarily have the following ingredients: firstly, a story; secondly, a script; thirdly, a screenplay and fourthly, music. Broadly, these four ingredients would enable the production of the final product, which is a cinematograph film.

14.2. In so far as the first three ingredients are concerned, they could, broadly, be labeled as literary works. While music would fall within the ambit of the statutory expression "musical works". Musical works itself would have two ingredients i.e. lyrics and the musical score.

14.3. Having regard to the ingredients, the rights in the story would vest in the author, while, rights in the screenplay would similarly vest in whosoever would have authored the same.

14.4. In so far as the music is concerned, the lyricist and the music composer would have their separate and independent rights in the musical work. Upon the production of the film, the producer would be the author, if he is the person who had taken the initiative and the responsibility of making the cinematograph film.

15. This aspect emerges upon a conjoint reading of the provisions of Section 2(d)(v) and Section 2(uu) of the 1957 Act. The relevant Sections read as follows:

"Section 2(d)(v):(d) "author" means,-

- (i) xxx
- (ii) xxx
- (iii) xxx
- (iv) xxx
- (v) in relation to a cinematograph film or sound recording, the producer."

"Section 2(uu):'producer', in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work."
(emphasis is ours)

16. Given the evidence on record that the respondents took the initiative and the responsibility of producing the subject cinematograph film, they would be the "producers" of the film and, in that, sense, its "authors"; while, the appellant, who is the author of the literary works, would have by virtue of provisions of Section 14(1) of the 1957 Act several exclusive rights conferred upon himself, subject, though, to the other provisions of the very same Act.

16.1. The rights that the appellant has under Section 14(1) (a) (i) to (vii) of the 1957 Act, could be exercised by him, either himself or by authorising another person to exercise the same.

16.2. For the sake of convenience, the relevant part of Section 14(1) (a) is extracted hereafter:

"Section 14:Meaning of copyright.(1) For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme, -

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;"

16.3. As would be evident, an author of a work has, inter alia, under the provisions of Section 14(a)(iv), the right to make a cinematograph film.

16.4. Pertinently, Sub-Section (d)(i) of Section 14 of the 1957 Act¹, (which is extracted hereafter), specifically, provides the rights that the author would have in a cinematograph film.

"Section 14 (1)
(a) xxx
(b) xxx
(c) xxx
(d) In the case of cinematograph film,-
(i) to make a copy of the film, including a photograph of any image forming part thereof;
(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
(iii) to communicate the film to the public.
(e) xxx"

16.5. A bare reading of the said provision would show that in case of cinematograph film, the producer, who is the author has, broadly, the following rights: the right to copy a film; to sell or give on hire or offer for sale or hire regardless of the fact that it has been sold or given on hire on earlier occasions, any copy of the film; and lastly to communicate the film to the public.

16.6. Therefore, quite clearly, while the appellant as the author of the literary work, i.e. the script had, inter alia, a right to make a cinematograph film, he cannot circumscribe that right, if, authority qua that right is given to another person. In so far as a cinematograph film is concerned, the rights which flow upon its creation are those, which are provided in Section 14(1)(d) of the 1957 Act.

16.7. As indicated above, in the case of a cinematograph film, the author or the person in whom the authority is vested, would have the right to make a copy of the film, to sell or give it on hire or offer for sale or hire, any copy of the film or to communicate the film to the public.

16.8. The expression 'communication to public' has been defined in Section 2(ff) of the 1957 Act. For the sake of convenience, the same is extracted hereafter:

"2(ff)"communication to the public"

¹ Amended via Copyright (Amendment) Act, 2012

means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.- For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public."

16.9. A close perusal of the definition would show that it envisages making of any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by means of display or diffusion other than by making physical copies of it, whether simultaneously or at places and times chosen individually, regardless of the fact whether any member of public actually sees or hears or otherwise enjoys the work or performance so made available.

17. In other words, it makes available to the producer / author, the right to make a cinematograph film available for being seen or heard or enjoyed by public directly or by any means of display or diffusion.

17.1. The use of the expression "otherwise enjoys" after the words seen or heard enlarges the scope of how communication with the public has to be made. If this was not so, the Legislature would have restricted the communication to aspects which are relatable to the obvious sensory attributes of human beings such as hearing and seeing. The Legislature it seems consciously has enlarged the scope of the expression "communication to the public" by bringing in the aspect of enjoyment. Dubbing would, thus, in our view, fall within the ambit of the expression communicating to the public.

18. In the context of a film, undoubtedly, dubbing involves embedding a sound track in a film, which is in a language different from that of the original. [See Concise Oxford Dictionary, Tenth edition (Revised) at page 440]

18.1. Translation of a work involves an exercise by which words or text used in the original work are expressed as closely as possible in another language [See Concise Oxford Dictionary Tenth Edition (Revised) at page 1523].

18.2. Therefore, while the translation of the literary work is carried out ordinarily by using a writing medium, dubbing involves the use of the sound track. The question, which, thus, comes to fore is whether the producer or the author of a cinematograph film is conferred with right to dub ?

18.3. To our minds, the answer has to be in the affirmative, as the right in a cinematograph film is independent to the right that a person may have in the underlying works, such as, the story, the script and/or the screenplay. In some cases, it may so happen that each of these rights vest in different persons. On the other hand, there could be a case, where, one or more rights vest in the same person.

18.4. In the instant case, admittedly, the story, the script and the screenplay was written by the appellant, and hence, the authorship qua them vests in him. The appellant, agreed to make a film with the help of respondents. The initiative and responsibility in respect of the same was, admittedly, taken by the respondents. The appellant was paid a sum of Rs.7,00,000/-. Therefore, quite clearly, in so far as the subject cinematograph film is concerned, the producers, being its authors', are entitled to its ownership. The respondents, therefore, as the producers / authors of the cinematograph film, in our view, would have all the rights in the subject film as conferred under Section 14(d)(iii) of the 1957 Act, which would include the right to dub.

18.5. An analogous principle is found embedded in Article 14 of the Berne Convention (1971 Paris Act)¹.

1

... (2) (a) Ownership of copyright in a cinematographic work shall be a matter for legislation in a country where protection is claimed.

(b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(c) XXXX

(d) By 'contrary or special stipulation' is meant any restrictive condition which is relevant to the aforesaid undertaking.

(2) XXXX

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above

18.6. In short, the principle being that the owners of copyright in a cinematographic work will, inter alia, have the right to both sub-title and dub their work. This, of-course, is subject to any restrictive condition being put in by the parties.

18.7. As would be evident in the facts of the case and the discussion made hereafter that no restrictive condition was put in by the appellant on the respondents qua dubbing.

18.8. Furthermore, the fact in the Indian cinema industry, there is a practice of dubbing a movie into number of languages is also borne out from observations made by the Andhra Pradesh High Court in the judgement rendered by it in : Sunder Pictures Circuit v. Moti Mahal Theaters, 1965 SCC OnLine AP 295.

18.9. This was a case wherein, the plaintiff, who was the assignee of copyright of a Tamil talkie film, sought to restrict the right of the defendants to exhibit and distribute the talkie in Hindi. The Court, while rejecting this plea, made the following observations :

"..... 38. The reason for not including the movie comprised in a talkie as its component in the copyright in a talkie is obvious for the movie is an independent work in which the author can have a copyright, an distinct from the copyright in the talkie. Further in the cinema industry, the practice of dubbing a movie into quite a number of languages is so well-known that the Act recognised the copyright in respect of the movie as being separate from the copyright in the talkie. Otherwise, the result would be that by assigning the copyright in a talkie film in one language, the author would be that by assigning the copyright in a talkie film in one language, the author would be denying himself the right of dubbing it in any other language in the world—a consequence which could never have been intended. Thus, even if the plaintiff is

shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)(b) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union."

an assignee of the copyright of the Tamil talkie film, he' cannot object to the exercise of the rights by defendants 1 and 2. It follows that the plaintiff who is an exclusive licensee entitled to rights of distribution in the Tamil talkie film, cannot restrain the exhibition or distribution of a talkie in Hindi which is based on the movie incorporated in that talkie." (emphasis is ours)

19. In this context, one needs to only re-emphasize the fact that under Section 2(d)(v) in relation to cinematograph film, the producer is the author. Furthermore, Section 2(f), which defines cinematograph film as a visual medium, includes a sound recording.

19.1. Thus, if, one were to juxtapose the aforesaid provisions with Section 17, which stipulates that the author of the work shall be the first owner of the copyright and the definition of the expression "work" in Section 2(y), which includes a cinematograph film, clearly, the producer will be the first author of the cinematograph film, if, he, otherwise, takes the initiative and the responsibility of making the said work. Producer in the context of a cinematograph film means, a person, who takes the initiative and the responsibility for making the work. {See Section 2(uu) of the 1957 Act}.

19.2. Our evaluation of the evidence in this case, thus, persuades us to come to the conclusion that the initiative and the responsibility for making the work i.e., cinematograph film, was taken by the respondents, and therefore, they had the right to dub the same.

19.3. Since, cinematograph film, as observed by us above, necessarily includes the embedded sound track, in our opinion, reconfiguring the sound track to a language different from the original would not affect the other underlying rights that the appellant may have in the other literary works, to which, we would advert hereafter.

19.4. Thus, we are not in agreement with the respondents that the right in the underlying work, which is the script, would also vest in them.

19.5. The evidence on record shows that the story, script and screenplay was not only written by the appellant but was made ready before the subject film went into production.

19.6. The budget sheet i.e. Ex.P3, on which, the

respondents rely upon, adverts to the consideration paid to the appellant towards directorial services rendered. There is nothing to suggest that the appellant, had also assigned his right in the script in favour of the respondents.

19.7. As correctly argued on behalf of the appellant, Section 19 of the 1957 Act, delineates the mode and manner of assignment. Section 19, inter alia, provides that no assignment of copyright in any work shall be valid unless it is in writing; and is signed by the assignor or, by his duly authorised agent {See Section 19(1) of the 1957 Act}.

19.8. Furthermore, for a valid assignment to take effect, it is essential that it should identify the work in which rights are assigned. The rights assigned should, further, be specified and/or expounded upon. In addition, the assignment should also indicate the duration and the territorial extent of such assignment. {See Section 19(2) of the 1957 Act}.

19.9. The writing by which assignment is made should also specify the royalty payable to the author or his legal heirs during the currency of the assignment, and that, assignment would be subject to revision, extension or termination on the terms mutually agreed upon between the parties. {See Section 19 (3) of the 1957 Act}¹.

20. In case, rights given to the assignee are not exercised, within a period of one year, from the date of assignment, these rights are deemed as having lapsed unless otherwise provided in the assignment agreement itself. {See Section 19(4) of the 1957 Act}.

20.1. Where the period of assignment is not given or, the territorial extent is not provided, it is deemed that the duration of the assignment, would be five (5) years from the date of the assignment and that it would not extend beyond the territory of India {See Section 19(5) of the 1957 Act}.

20.2. In the instant case, the budget sheet, though, signed makes no reference to the work assigned. Even if we were to assume based on the pleadings on record that budget sheet referred to the subject film i.e. 'Aaranya Kaandam', it surely does not advert to the rights, if any, assigned; the duration of the rights so assigned; and/or their territorial extent. Clearly, it is not an assignment in terms of the provisions of Section 19 of the 1957 Act.

21. Therefore, in any event, as correctly argued on behalf of the appellant, the right in the underlying work i.e. script, in the eyes of law, could not be said to have been assigned to

¹ Amended via Copyright (Amendment) Act, 2012

the respondents.

22. For the sake of argument, even if we were to agree that such a right is assigned, notwithstanding the fact that no duration is set out in the budget sheet (Ex.P3), the same would expire upon the period of five years coming to an end, from the date of the assignment. This would be so, even if, we were to take the date of completion of the film as the date of assignment. If that date is taken into account the period of assignment, would come to an end on 25.05.2015, as according to the respondents, the subject film stood completed on 25.05.2010 (See paragraph 8 of the written statement filed on behalf of the respondents).

23. We may note that it was sought to be contended on behalf of the respondents that the appellant was engaged to provide a script in respect of the subject film and therefore the consideration paid included a specific amount towards the rights in the script. This contention is not borne out from the record, as indicated above.

24. The evidence, clearly, shows that the script was ready before the subject film went into production.

25. In view of our discussion above, the appellant continues to retain his rights in the script as there has been no assignment of that right in favour of the respondents in accordance with the provision of Section 19 of the 1957 Act.

26. The question which, then, comes to fore is that can the respondents remake the subject film or make other versions of the subject film. Clearly these are not the rights which are provided to the producer / author of the cinematograph film, if, the said right vests in a person different from the person in whom the right in the script vests.

27. In the instant case, the right in the script vests in the appellant, while the right in the subject cinematograph film vest in the respondents.

28. Therefore, the respondents rights in the cinematograph film can only be those which are provided for in Section 14(1) (d) of the 1957 Act. A remake of the film or its versions which are, substantially similar to the original cinematograph film cannot come within the ambit of the right to copy a film, which is provided for under Section 14(1)(d)(i) of the 1957 Act. In our opinion, while the right to copy a film includes the right to replicate the said film, it, however, does not include the right to remake or to make different versions of the same film.

29. Similarly, the right to remake or make different versions of the film, as indicated above also does not fall within the expression "communicating the film to public" as this would entail changes being made in the original script, albeit, without the consent of the appellant. Since, the copyright in the script still remains with the appellant, the respondents, to our minds, cannot remake the subject film or make other versions of the same film. While, it is well settled that there is no copyright in an idea, the remake or another version of the subject cinematograph film, which is based substantially on the subject script would, certainly, infringe the appellant's copyright in the works of which he is the author.

30. Therefore, for the foregoing reasons, the appeal is partially allowed, the suit is decreed to the extent that the respondents are enjoined from remaking the film or making different versions of the film which is based, substantially, on the subject script.

31. The captioned appeal is, partially, allowed in the aforesaid terms, leaving parties to bear their own costs.

Sd/-
Assistant Registrar (CS III)

//True copy//

Sub Assistant Registrar

kk/gg

To

The Sub Assistant Registrar (Original Side),
High Court, Madras.

+1cc to Mr.M.V.Swaroop, Advocate SR.No.82405

+1cc to M/s.Kavitha Deenadayalan, Advocate SR.No.82411

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