

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 09TH DAY OF OCTOBER 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.Nos.3776 and 3777 of 2017
and
O.A. Nos.611 & 612 of 2017
in
C.S. No.459 of 2017

Mr.N.Anand Babu,
S/o.late Sri C.K.Nagesh,
7/15, Defence Officer's Colony,
Ekkattuthangal, Chennai-600 032. ... Applicant/Plaintiff
(in both original applications)

-Versus-

1. M/s.Transindia Media &
Entertainment Pvt. Limited,
rep. by its Managing Director,
having its office at
HIG-1778, TNHB, 4th Main Road,
Velachery, Chennai-600 042.
2. Mr.Isaq @ Mohamad Issack,
Director,
HIG-1778, TNHB, 4th Main Road,
Velachery, Chennai-600 042.
3. The President,
Tamil Film Producers' Council
Film Chamber Compound,
No.606, Anna Salai,
Thousand Lights,
Chennai-600 006. ... Respondents/Defendants
(in both original applications)

O.A. No.611 of 2017:-

Original Application praying that this Hon'ble Court be
pleased to pass an ad-interim injunction restraining the
respondents 1 & 2/defendants 1 & 2, from releasing the movie

named "Nagesh Thirarangam" in any of the Theatres or through satellites.

O.A. No.612 of 2017:-

Original Application praying that this Hon'ble Court be pleased to pass an ad-interim injunction restraining the respondents 1 & 2/defendants 1 & 2, from using the name "Nagesh Thiraiarangam" for any of their films or works.

A.Nos.3776 & 3777 of 2017:

1. M/s.Transindia Media &
Entertainment Pvt. Limited,
rep. by its Managing Director,
Rajendra M.Rajan
having its office at
HIG-1778, TNHB, 4th Main Road,
Velachery, Chennai-600 042.
2. Mr.Isaq @ Mohammed Issack,
Director,
HIG-1778, TNHB, 4th Main Road,
Velachery, Chennai-600 042.

...Applicants/Respondents 1 & 2/Defendants 1&2

-vs-

1.Mr.N.Anand Babu,
S/o.late Sri C.K.Nagesh,
7/15, Defence Officer's Colony,
Ekkattuthangal,
Chennai-600 032. ..1st Respondent/Applicant/Plaintiff

2.The President,
Tamil Film Producers' Council
Film Chamber Compound,
No.606, Anna Salai,
Thousand Lights,
Chennai-600 006.

..2nd Respondent/3rd Respondent/3rd Defendant

A.No.3776 of 2017:

Application praying that this Hon'ble Court be pleased to vacate the order of ad-interim injunction granted in O.A.No.611 of 2017.

A.No.3777 of 2017:

Application praying that this Hon'ble Court be pleased to vacate the order of ad-interim injunction granted in O.A.No.612 of 2017.

These applications coming on this day before this court for hearing the court made the following order:-

C.S.No.459 of 2017 has been filed by the plaintiff, seeking a judgement and Decree against the first and second defendants to pay a sum of Rs.50,00,000/- (Rupees fifty Lakhs only) as damages/compensation to the plaintiff and for a declaration prohibiting the use of the name "Nagesh Thiraiarangam" for the title of the movie and for advertisements, trailers and teasers related to the said movie and for permanent injunction restraining the defendants 1 and 2, from using the name "Nagesh Thiraiarangam" in any of their films or works and for costs of the suit.

2. The plaintiff is the son of late Sri C.K.Nagesh, who was a very popular Actor and had acted in more than 1000 films during the period 1958 to 2008. He had performed in a

variety of roles. He also owned a theatre called "Nagesh Theatre", located at T.Nagar, Chennai. The said theatre was sold in the year 2008 to a third party and converted into a Marriage Hall.

3. It has been further stated that the first defendant is producing a Tamil Film, by name "Nagesh Thiraiarangam", and the second defendant is the Director of the said film. According to the plaintiff, the defendants are making use of the popularity of his father's name, "Nagesh" and including the theatre by vernacular name, "Thiraiarangam " and have produced the said film, deliberately, to make profit. It has been stated that this had been done without permission to use the name. The plaintiff and other family members of late C.K.Nagesh were shocked, when the teasers and advertisements exploiting the names, "Nagesh" / "Nagesh Theatre" had been released. In such circumstances, it had been claimed that the said movie cannot be released under the name "Nagesh Thiraiarangam" without permission. In such circumstances, the suit has been filed, as stated above for damages and for injunction.

4. In the said suit, the plaintiff had filed O.A.No.611 of 2017, seeking an order of interim injunction, restraining the defendants from releasing the movie named "Nagesh

Thiraiarangam" in any of the Theatres or through satellites. The plaintiff has also filed O.A.No.612 of 2017, seeking an order of injunction, restraining the respondents 1 and 2 from using the name "Nagesh Thiraiarangam" for any of their films or works. This Court has granted interim orders as prayed for.

5. Subsequently, the respondents entered into appearance and they had filed A.No.3776 of 2017 to vacate the order of interim injunction granted in O.A.No.611 of 2017 and also A.No.3777 of 2017 to vacate the order of injunction granted in O.A.No.612 of 2017. In the affidavit filed in support of the said applications, the first respondent had stated that the plaintiff did not comply with provisions of Order 39 Rule 3 of CPC. They admitted that the film is produced under the name "Nagesh Thiraiarangam". It has been stated that it was false to contend that the respondents are exploiting the name "Nagesh" by using the name "Nagesh Thiraiarangam".

6. According to the respondents, the building "Nagesh Thiraiarangam" in the movie is located in a remote village and there is no reference to "Nagesh Theatre", which existed in T.Nagar, Chennai. It has been further stated that the movie does not revolve around the name "Nagesh" or "Nagesh Thiraiarangam". It had been further stated that the

allegation that the movie is being promoted by using the name "Nagesh Thiraiarangam" is absolutely false. It has been further stated that the applicant/plaintiff had sent a letter dated 01.03.2017 to the 3rd respondent namely President, Tamil Film Producers' Council. However, they came to conclusion that the respondents/defendants 1 & 2 cannot be prevented from using the name "Nagesh Thiraiarangam", because "Nagesh Theatre" was demolished even in the year 2008. It has been stated that the orders of interim injunction is causing much hardship to the first and second respondents and consequently, it has been stated that the said orders should be vacated.

7. Heard, the arguments advance by the learned counsel Mr.T.Mathi, learned counsel for the plaintiff and Mr.M.S.Krishnan, learned Senior counsel for the defendants. For the sake of convenience, the parties are referred as plaintiff and the defendants.

8. During the course of hearing, the defendants had filed an affidavit, stating that the movie "Nagesh Thiraiarangam" will not have any bearing to the character of late C.K.Nagesh. It has also been stated that there shall be no deviation in the script of the movie, when the movie is produced and released in the theatre. This affidavit was

filed consequent to this Court calling upon the defendants to produce a copy of the script of picture of the "Nagesh Thiraiarangam". This Court had the benefit of reading the said script. It is seen that the story does not mention "Nagesh Theatre" situated at T.Nagar. The main character is also not called "Nagesh".

9. The learned counsel for the plaintiff has submitted two compact disks, which showed that in the advertisement and in teasers, the defendants are using the name of his father "Nagesh". The learned Senior Counsel for the defendants had given an undertaking that the said teaser/advertisement will not be used and the movie shall be exhibited strictly in accordance with the script forwarded to this Court. On a perusal of the script, it is seen that it has nothing to do with the character "Nagesh" or with Theatre, "Nagesh Theatre". Even though the name "Nagesh" is familiar, popular in Tamil Film, the word "Thiraiarangam" can be used by any one, and there cannot be any injunction relating to the word "Thiraiarangam". It is also to be mentioned that "Nagesh Theatre" had been actually sold by the family in the year 2008, and it is not in existence as a theatre and it has been converted into a Marriage Hall. Consequently, there cannot be an order of injunction, as against the defendant from using the name "Nagesh Thiraiarangam". The name

"Nagesh" is a pronoun and there cannot be exclusivity to the same. There had been instances of films like "Shivaji the Boss" using the name of an erstwhile actor.

10. The 3rd respondent in the application, namely President, Tamil Film Producers' Council had also stated that first and second respondents cannot be prevented from using the name "Nagesh Thiraiarangam".

11. For all the reasons stated above, the interim injunction granted in O.A.No.611 of 2017 and O.A.No.612 of 2017 will have to be vacated, however subject to the following conditions:-

(i) The first and second defendants cannot use the name "Nagesh" independently, or exploit the popularity of the famous Actor C.K.Nagesh for promoting the film "Nagesh Thiraiarangam."

(ii) The defendants shall use the word "Nagesh Thiraiarangam" and cannot refer to the name "Nagesh Theatre", T.Nagar, Chennai.

(iii) Teasers/advertisements produced by the defendants allegedly using the name of the actor "C.K.Nagesh" or the theatre "Nagesh Theatre" have to be immediately withdrawn.

Advertisements of the movie shall not be on the basis of the popularity of the Actor "C.K.Nagesh" or "Nagesh Theatre".

12. With the above observations O.A.Nos.611 of 2017 and 612 of 2017 are dismissed and application Nos.3776 of 2017 and 3777 of 2017 are allowed.

13. However, the plaintiff is permitted to approach this Court at any time, if it comes to their notice that, the defendants are exploiting the name "Nagesh" or "Nagesh Theatre" for promoting the film "Nagesh Thiraiarangam".

Sd/-C.V.K.J

09/10/2017

//Certified to be a true copy//

Dated this the day of 2017

JJ 13/12/2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.