

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 24.02.2017

Judgment Pronounced on: 01.03.2017

Coram:

The Hon'ble Mr.Justice N.SATHISHKUMAR

Civil Suit No.144 of 2011

Sivaji Productions,
rep. By its Managing Partner
Mr.G.Ramkumar,
No.25, Besant Road,
Royapettah, Chennai-600 014.

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Plaintiff

Versus

Symphony Home Videos,
73/5, Sivamela Vidhi Chetty Street,
Velankanni, Nagapattinam District,
Tamilnadu.

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Defendant

The suit has been filed under Order VII Rule 1 of Code of Civil Procedure read with Sections 55 and 62 of the Copyright Act, 1957, for the following reliefs:-

(a) to pass a judgment and decree of Permanent Injunction restraining the defendant, its men, agent/agents, or any person claiming through or under the defendant, from in any manner infringing the copyright of the plaintiff viz., Indian VCD and/ or DVD rights, over the Tamil feature film "Aasal", in any manner whatsoever;

(b) pass a judgment and decree of Mandatory Injunction directing the defendant to deliver and handover to the plaintiff all the infringing VCDs and DVDs of the Tamil feature film "Aasal".

For Plaintiff	..	Mr.Gautam S.Raman
For Defendant	..	No Appearance.

JUDGMENT

The suit is filed for a Permanent Injunction restraining the defendant, from in any manner infringing the copyright of the plaintiff viz., Indian VCD and/or DVD rights, over the Tamil feature film "Aasal", in any manner whatsoever; and for a Mandatory Injunction directing the defendant to deliver and handover to the plaintiff all the infringing VCDs and DVDs of the Tamil feature film "Aasal".

2. Brief facts of the plaintiff's case are as follows:- The plaintiff is a registered partnership firm, engaged in the business of film production and distribution for the past 47 years. In the course of its business, the plaintiff produced a Tamil feature film titled "Aasal" starring Mr.Ajith, Ms.Sameera Reddy and others and directed by Mr.Saran. The total cost of production was Rs.21.70 Crores. The film was released on 05.02.2010, all over India.

3. The plaintiff assigned the exclusive World Satellite Television Broadcasting rights, Terrestrial Television broadcasting rights etc., to Ayangaran International Media Private Limited, Chennai, under a Memorandum of Understanding dated 28.04.2009, while retaining the Indian VCD and DVD exploitation rights. Subsequently, under an agreement dated 22.01.2010, the said Ayangaran International Media Private Limited assigned the exclusive World Satellite Television Broadcasting rights, Terrestrial Broadcasting rights etc. of the said film to Sun TV Network Limited. On the same day, a tri-partite agreement was entered into between the plaintiff, Ayangaran International Media Private Limited and Sun TV Network Limited and while recording the above facts, the plaintiff undertook not to exploit the rights retained by it viz., Indian VCD and DVD rights of the said feature film till completion of one year from the date of first telecast of the film by Sun TV Network Limited. The film was released on 05.02.2010. However, the Sun TV Network Limited has not telecast the film under the above referred agreement dated 22.01.2010 till the date of filing of the suit.

4. The plaintiff thereafter was shocked to find that the VCDs and DVDs of the said film were being sold commercially. The plaintiff purchased such DVDs from Saraswathi Stores, Alwarpet, Chennai, Landmark Limited, Chennai and Supreme

Audio, Chennai for Rs.65/-. Strangely, on the cover of these DVDs, the name of the plaintiff appears along with that of the defendant. The defendant has spelt the name of the movie in English as "Asal" although it is the very same movie "Aasal" that was produced by the plaintiff. The Tamil spelling on the DVD cover is the same. On the reverse of the cover, the words "Copyright Owned, Manufactured and Marketed by SYMPHONY Home Video" are printed. It is also stated that under Section 52(a) of the Copyright Act, the defendant has obtained necessary "copyright works" for making the DVD film. A warning has also been printed stating that the Copyright holder has licensed the film for "Transport use only". No such license for "Transport use" has been granted by the plaintiff to anybody, much less the defendant. The defendant does not hold the copyright for the said film for Indian VCD and DVD. The only two entities with which the plaintiff has dealt with, in terms of assignment of the rights pertaining to the said film, were the aforesaid Ayangaran International Media Private Limited and Sun TV Network Limited. The defendant is a complete stranger and has no iota of right over the said film. The defendant is clearly involved in piracy and has infringed the plaintiff's copyright over the said feature film and is making commercial gain out of it. The defendant is not only engaged in illegal gain but also defeating the plaintiff's valuable copyright. The

VCDs and DVDs are being sold by the defendant in many shops on a daily basis. Therefore, unless the defendant is restrained by an order of injunction from infringing the plaintiff's copyright over the said film and directed to deliver all such infringing/ illegal VCDs and/or DVDs, serious prejudice, heavy loss and grave hardship would accrue to the plaintiff. Hence, the suit.

5. Despite the receipt of suit summons by the defendant and having entered appearance through his counsel, the defendant did not chose to file written statement so far and hence this Court has already set the defendant ex parte.

6. Mr. R.G.Dushyanth, one of the partners of the plaintiff partnership firm examined himself as P.W.1 and marked Exhibits P1 to P6. Ex.P1 dated 06.11.2007 is a copy of Reconstituted Deed of Partnership. Ex.P2 dated 28.04.2009 is the Memorandum of Understanding entered into between the plaintiff and Ayangaran International Media Private Limited, Chennai, in and by which the plaintiff has assigned the exclusive World Satellite Television Broadcasting rights, Terrestrial Television broadcasting rights etc., to Ayangaran International Media Private Limited, Chennai. Ex.P3 dated 24.02.2011 is the Bill with DVD to show the sale of DVD by

Saraswathi Store, Alwarpet, Chennai. Ex.P4 dated 26.02.2011 is the similar Bill with DVD to show the sale of DVD by Landmark Limited, Chennai. Ex.P5 dated 26.02.2011 is also the similar Bill with DVD to show the sale of DVD by Supreme Audio, Chennai. Ex.P6 dated 21.03.1957 is the Firm of Registration Certificate of the plaintiff partnership firm.

7. P.W.1 is one of the partners of the plaintiff has spoken about the production of the Tamil feature film titled "Aasal" starring Mr.Ajith, Ms.Sameera Reddy and others. He has also spoken about the assignment of the exclusive World Satellite Television Broadcasting rights etc., to Ayangaran International Media Private Limited, Chennai, under a Memorandum of Understanding dated 28.04.2009, while retaining the Indian VCD and DVD exploitation rights. It is also spoken by P.W.1 about the tri-partite agreement entered into between the plaintiff, Ayangaran International Media Private Limited and Sun TV Network Limited. It is also spoken by P.W.1 that when the matter stood thus, the defendant selling VCD and DVD rights of the said film in the market and the defendant has been selling such VCD and DVD in many shops on a daily basis by infringing the copyright of the plaintiff.

8. The evidence of P.W.1 remains unchallenged. The defendant

remains ex parte. Ex.P2 is the Memorandum of Understanding entered into between the plaintiff and Ayangaran International Media Private Limited, Chennai. The same would clearly show that the plaintiff company has assigned the exclusive World Satellite Television Broadcasting rights, Terrestrial Television broadcasting rights etc., of the Tamil feature film titled "Aasal" in favour of Ayangaran International Media Private Limited, Chennai. The agreement does not include rights to sell VCD and DVD in favour of the assignee. Ex.P3 has been filed to show that the DVD of the Tamil feature film titled "Aasal" has been sold in the name of defendant. Ex.P4 and Ex.P5 were also filed to show that such DVDs of Tamil feature film titled "Aasal" are available for sale in the market and it has been sold by the defendant. Ex.P6 is the copy of the Firm of Registration Certificate of the plaintiff company. It is the evidence of P.W.1 that they retained DVD and VCD rights. When the evidence of P.W.1 remain unchallenged, the pleadings in the plaint and the evidence of P.W.1 has to be taken as admitted on the side of the defendant. The defendant without any right of whatsoever infringed the copyright of the plaintiff and sold DVDs and VCDs in the market in their name. The cover of the DVDs exhibited here clearly shows that the defendant has infringed the copyright owned by the plaintiff. It is utter violation of law. In the absence of any permission

or agreement with the plaintiff the defendant cannot infringe the copyrights of the plaintiff's Tamil feature film titled "Aasal" and sell the DVD and VCD in the market. From the oral and documentary evidence the plaintiff has established their case of infringement by the defendant and for grant of injunction.

9. Accordingly, the suit is decreed for a permanent injunction restraining the defendant from in any manner infringing the copyright of the plaintiff viz., Indian VCD and/ or DVD rights, over the Tamil feature film "Aasal", in any manner whatsoever and Mandatory Injunction directing the defendant to deliver and handover to the plaintiff all the infringing VCDs and DVDs of the Tamil feature film "Aasal", with costs.

01.03.2017

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N.SATHISHKUMAR, J

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PRE DELIVERY JUDGMENT IN
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