

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 12.06.2018	Delivered on 25.06.2018
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CORAM:

The Honourable Mr. Justice **M.M.SUNDRESH**
and
The Honourable Mr. Justice **N.ANAND VENKATESH**

Original Side Appeal No.269 of 2017

Miss.Kajal Agarwal

Vs.

... Appellant

The Managing Director,
M/s.V.V.D. & sons Pvt.Ltd.,
No.6/18, Casa Major Road,
Egmore,
Chennai-600008.

... Respondent

Original Side Appeal is filed under Order XXXVI Rule 1 of the O.S. Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 03.07.2017 made in C.S.No.635 of 2011.

For Appellant : Mr.V.Manohar

For Respondent : Mr.Giridhar for
M/s.Giridhar & Sai

JUDGMENT**N. ANAND VENKATESH, J.**

The present O.S.A has been filed against the judgement and decree passed in C.S.No.635 of 2017, dated 03/07/2017, in and by which the suit filed by the appellant came to be dismissed.

2.The case of the appellant in brief:

2.1.The appellant is a popular actress and the respondent approached her to endorse, promote and support their products of hair oil and coconut oil through advertisements and requested the appellant to act in the advertisement film and photo shoot for two days endorsing their oil products. On mutual negotiations, the terms were finalised and the appellant agreed to the offer made by the respondent. On finalisation of the terms with the respondent, the appellant completed the shooting and photo session for two full days believing that the respondent would honour their commitment. After the completion of the shoot, the respondent did not keep up their commitment and violated the terms agreed upon by both the parties. The terms which were orally agreed upon were not incorporated in letter and spirit in the agreement that was prepared on

29/12/2008. In fact this agreement was signed only by the respondent and the appellant did not sign the agreement since it did not incorporate all the agreed conditions. The respondent even without incorporating the agreed conditions and finalising the written agreement, started using the advertisement materials for their product marketing. Legal notices were exchanged between the parties.

2.2. Even as per the written agreement to which the appellant did not subscribe her signature, the respondent can use the advertisement material only for a period of one year from 29/12/2008 to 28/12/2009. However in violation of this specific term in the agreement, the respondent continued to use the advertisement materials without even obtaining any consent from the appellant. In the meantime, the appellant became a very popular actress and there was more demand for her presence as brand ambassador for the products of many reputed multinational Companies. The appellant issued a legal notice dated 12/09/2011 and called upon the respondent to immediately desist from using the advertisement materials. In spite of the receipt of notice, the respondent continued to use the advertisement materials. Left with no other alternative, the appellant filed a suit seeking for the relief of compensation

and for a permanent injunction to restrain the respondent from using or publicising or promoting or advertising the materials with the presence of the plaintiff's profile or her presence in any form.

3.The case of the respondent in brief:

3.1.The appellant at the time of making this advertisement film was an ordinary model and only later she became an actor in movies. The appellant is trying to take advantage of her growing popularity. The respondent has already paid the remuneration of rupees 3 lakhs to the appellant for the advertisement film as per the terms of the agreement. The respondent has been using the advertisement material strictly in accordance with the agreement and none of the terms of the agreement was violated. The respondent holds the copyright over the advertisement film and all the rights in the film vests with the respondent and the appellant does not have any right over the same. The respondent has fulfilled their obligation in making the payment as agreed, to the appellant. The Video Film is a cinematography work over which the respondent holds the copyright having paid for and produced the same and has every right to exercise its rights under the Copyright Act. The appellant who has already received the remuneration for her performance, has no subsisting

rights in the cinematography work for which the respondent holds the copyright. The appellant is not entitled for any of the reliefs sought for in the suit.

4.The learned Single Judge framed as much as 14 issues for determination. One witness was examined on the side of the appellant and Exs.P-1 to P-18 were marked. On the side of the respondent one witness was examined and Ex.D-1 and M.O.1 was marked.

5.The learned Single Judge after considering the pleadings, evidence and the various legal provisions under the Copyright Act and also the submissions put forth by the learned Counsel appearing on either side was pleased to dismiss the suit filed by the appellant mainly on the ground that once the copyright is vested with the respondent and he has become the owner of the copyright of the cinematograph film, the respondent cannot be restricted to use the profile of the appellant for the period specified in the agreement, and therefore, the respondent has not violated any of the terms and conditions in the agreement.

6. The learned Counsel for the appellant contended that copyright is applicable only to the third parties and to the world and not in between the parties who have specifically circumscribed their rights and liabilities by way of a contract. The learned Counsel would further contend that as per proviso (c) to Section 17 of the Copyright Act, the respondent will be the owner of the copyright only in the absence of any agreement to the contrary. When the agreement is only for a period of one year, claiming copyright over the cinematograph film beyond one year by the respondent is not sustainable in law. The learned Counsel would further contend that the learned Single Judge viewed the entire case purely from the angle of the Copyright Act without appreciating the agreement entered into by the parties wherein they have agreed upon specific terms and conditions as a result of which the facts of the case were not properly appreciated. The learned Counsel also brought to our notice the orders passed by the Division Bench, during the pendency of the Suit, when a challenge was made against the dismissal of the injunction application that was filed pending the suit. This order was also reported in **2012 (1) L.W page 330**. According to the learned Counsel, the Division Bench of this Court specifically went into the issue as to whether the respondent is entitled to use the profile of the appellant in the audio and video cassettes even

beyond the period of one year and held that as per proviso (c) to Section 17 of the Copyright Act, the emphasis is in the absence of contract to the contrary and therefore when the agreement is only for a period of one year, claiming copyright beyond that period is not permissible. The learned Counsel contended that the learned Single Judge who was bound by this order of the Division Bench on the question of law erroneously disregarded the same. The learned Counsel would further contend that the contract specifically restricted the appellant from endorsing or acting in an advertisement film of any other hair oil and coconut oil brand for a period of 12 months from the date of the agreement. When the respondent is in a position to enforce this restriction upon the appellant for a period of one year in terms of the agreement, the appellant must also have the very same right to restrict the respondent from using the advertisement material for a period beyond 12 months from the date of the agreement failing which the agreement itself will become one-sided. The learned Counsel further contended that if the respondent is allowed to use the advertisement material for the period beyond 12 months, the appellant will not be in a position to endorse or act in an advertisement film of a competitor, since she will be violating a similar restriction that may be imposed by the competitor entity. In short the learned Counsel for the

appellant would contend that the entire case revolves around the agreement entered into between the parties and the rights that flow out of the agreement cannot be curtailed by invoking the Copyright Act and if the learned Single Judge had viewed the case from that angle and appreciated the evidence adduced before the Court, the appellant would have succeeded and got the relief prayed for in the suit.

7. Per contra, the learned Counsel for the respondent would contend that there has been no violation of the terms and conditions of the agreement and the respondent has not misused the profile of the appellant beyond the period stipulated in the agreement. The learned Counsel brought to the notice of the Court the specific term in the agreement which conferred a copyright to the respondent over the cinematograph film, audio, video cassettes, CDs and other promotional material in the medium developed between the parties and he contends that the appellant having agreed to confer this right cannot be allowed to turn around and deny that statutory right. The learned Counsel further relied upon Section 2 (f) of the Copyright Act which defines a cinematograph film. The learned counsel also relied upon Sec 14(1) (d)(iii) of the Act and argued that the said provision specifically gives the right to the respondent to

communicate the cinematograph film to the public by virtue of the respondent being the owner of the copyright. The learned Counsel further relied upon Section 17 of the Copyright Act which deals with the first owner of the Copyright and according to the learned Counsel for the respondent, it is this ownership that was incorporated in Clause 4 of the agreement. The learned Counsel further relied upon Section 26 of the Copyright Act and contended that in case of a cinematograph film, the copyright shall subsist for a period of 60 years. The learned counsel would further contend that on the completion of the production of a cinematograph film, the Copyright in the film be vested only on the owner of the copyright who can exploit the same and the performer as such cannot claim any individual right. The learned counsel would further contend that the appellant did not even get into the box and it was only her father who tendered evidence on the side of the appellant. He was not conversant with the facts and circumstances of the case and also the basis on which the case has been instituted and no materials were placed to show that the appellant's future prospects were spoiled or that she suffered a loss due to the usage of the advertisement material by the respondent beyond the period stipulated in the agreement. The learned Counsel would finally contend that the right of a performer came to be

recognised by virtue of the deletion of sub Sections (3) and (4) of Section 38 and the insertion of Section 38-A of the Copyright Act which came into effect on 21/06/2012 much after the filing of the present Suit and it has only a prospective effect. Therefore, if at all the respondent wants to claim royalties by virtue of the exclusive right of the performers recognised from 21/06/2012, it is for the appellant to work out her remedies in a separate proceeding and not in the suit. The learned Counsel would therefore contend that there are absolutely no grounds to interfere with the judgement and decree passed by the learned Single Judge and this OSA deserves to be dismissed.

8. We have heard the learned counsel appearing on either side and we have carefully perused the materials placed before us and also the various legal provisions that were brought to our attention. The following points arise for consideration:

A. Where the Copyright Act gives the first owner of the copyright of the cinematograph film a term of 60 years to exploit the work under section 26 of the Act, whether the same could be restricted by the parties by way of a contract for a lesser period?

B. Whether in a cinematograph film more particularly in an advertisement film, where apart from the appellant as performer it also involves various other players like the cameraman, music director, director of the advertisement film etc., and the respondent as a producer and the first owner of the copyright of the film can be restricted to exploit his production for a lesser period than the one conferred by the Copyright Act based on an agreement entered into by him with one of the performers?

C. What is the scope of proviso (c) to Section 17 of the Copyright Act and whether the order passed by the division bench of this Court during the interlocutory stage on this issue will have a binding effect while deciding this issue at the stage of final hearing when all the materials are before the Court?

D. What is the effect of the deletion of sub Sections (3) and (4) of section 38 and the insertion of Section 38-A of the Copyright Act and whether the appellant can take advantage of these provisions which came into effect from 21/06/2012?

E. Whether the exploitation of the cinematograph film by the respondent beyond the period stipulated by the agreement will restrict/prevent the appellant from endorsing or acting in the advertisement film of the competitors or other persons who deal with similar products?

9. This Court deems it fit to take issue (C) in the points for consideration to begin with since an answer to this issue will give more clarity in deciding the other issues.

10. In this case there is no dispute among the parties with regard to the agreement entered into by them. Even though the appellant would state that she did not subscribe her signature to the agreement dated 29.12.2008, the terms contained therein was agreed upon by both the parties. In fact the learned counsel for both the appellant and the respondent developed their arguments only from this agreement dated 29.12.2008.

11. The main issue on which the learned Counsel for appellant based his argument has by relying upon Clause 9 of the agreement which

specifically provide that the period of agreement was for 12 months from 29.12.2008 to 28.12.2009. By pointing out to this Clause, the learned counsel for the appellant would submit that proviso (c) to Section 17 of the Copyright Act will not operate in favour of the first owner of the copyright for the work [which in this case is the cinematograph film], where there is an agreement to the contrary. In order to appreciate the submission put forth by the learned counsel for the appellant, it is necessary to extract certain relevant provisions from the Copyright Act.

Section (2)(d) defines "author" as follows:

- (i) in relation to a literary or dramatic work, the author of the work;
- (ii) in relation to a musical work, the composer;
- (iii) in relation to an artistic work other than a photograph, the artist;
- (iv) in relation to a photograph, the person taking the photograph;
- (v) in relation to a or sound recording, the producer ; and
- (vi) in relation to any literacy, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;]

Section (2)(f) defines a "cinematograph film" as follows:

"cinematograph film" means any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;

Section (2)(qq) defines "performer" as follows:

"performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance:

[Provided that in a a person whose performance is casual or incidental in nature and, in the normal course of the practice of the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purpose of clause (b) of section 38-B;]

Section (2)(uu) defines "producer" as follows:

"producer", in relation to a or sound recording, means a person who takes the initiative

and responsibility for making the work;]

Section (2)(y) defines "work" as follows:

"work" means any of the following works, namely:-

- (i) a literary, dramatic, musical or artistic work;
- (ii) a cinematograph film;
- (iii) a [sound recording];

12. It is also necessary to extract Section 14 which gives the meaning of a Copyright and 14 (i) (d) reads as follows:

"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)

(b)

(c) सत्यमेव जयते

(d) in the case of a cinematograph film,-

[(i) to make a copy of the film, including-

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;

(ii) to sell or given on commercial rental or

offer for sale or for such rental, any copy of the film;]

(ii) to sell or given 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;

13. The first owner of a copyright is defined under Section 17 of the Copyright Act and for the purposes of this case proviso (b) and Proviso (c) of Section 17 is extracted here under:

17. First owner of copyright:- Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that -

(a)

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a made, for valuable consideration, at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

14. It is also important to extract Section 26 of the Copyright Act which deals with the term of the copyright in which reads as follows:

26. Term of copyright in cinematograph film

In the case of a cinematograph film, copyright shall subsist until [sixty years], from the beginning of the calendar year next following the year in which the film is published.

15. In this case, a reading of Clause 3 and 4 of the agreement makes it clear that what was produced by the respondent will clearly fall within the definition of a cinematograph film. It is an admitted case that the respondent is the producer of the cinematograph film and therefore will fall within the definition of "author" and consequently will also fall within the definition of a "producer" since what was produced by the respondent was a cinematograph film, which will also come within the purview of the definition "work".

16.It is also an admitted fact that the appellant by virtue of Clause 4 of the agreement has acknowledged the specific condition that the cinematograph film and the other promotional materials in any medium developed between both the parties, will be the copyright of the respondent. By virtue of this condition, the respondent who is the author of the work shall be the first owner of the copy right. As the first owner of the copy right, the respondent will have the exclusive right to communicate the cinematograph film to the public by virtue of Section 14 (i) (d) (iii).

17.Once the respondent becomes the first owner of the copy right, the right shall subsist for a period of 60 years as provided under Section 26 of the Copyright Act.

18.Now the moot question that is to be answered by this Court in the background facts and the legal provisions dealt with herein above is whether by virtue of Clause 9 of the agreement, the respondent can enjoy this copyright only for a period of one year and not beyond that period ?

19.The learned counsel for the appellant argues that by virtue of proviso (b) and (c) to Section 17 of the Copyright Act, the respondent cannot become the first owner of the copyright since there is an agreement to the contrary and the rights and liabilities of the parties is covered only by the agreement dated 29.12.2008 and not under the Copyright Act.

20.Proviso (b) to Section 17 will be applicable in the cases of

- (i) Photographs taken;
- (ii) a painting drawn;
- (iii) a portrait drawn;
- (iv) an engraving made; and
- (v) made, for valuable consideration at the instance of a person. Unless there is an agreement to the contrary as person who commissioned such works shall be the owner of the copyright therein.

21.In order to use this proviso against the respondent, there must be an agreement to the contrary to the effect that the parties themselves agreed that the producer will not have the copyright in spite of producing the cinematograph film. In the instant case this proviso will not come into play since the appellant has agreed that the cinematograph film and the

entire promotional material will be the copyright of the respondent. Therefore, there is no agreement to the contrary taking away the copyright of the respondent.

22.Proviso (c) to Section 17 will be applicable in cases of where;

- (a)the author makes a work,
- (b)in the course of his employment,
- (c)under a contract of service or apprenticeship,
- and
- (d)the case does not fall within Clause (a) or Clause (b) of the section,
- (e)and there is no agreement to the contrary, the employer shall be the first owner of the copyright, but, in all other cases, the author shall be the first owner. Thus, the author or the compiler is the first owner of the copyright, but if (a) he is employed by another under a contract of service, and (b) the compilation is made in the course of the employment and (c) If there is no agreement to the contrary the employer is the first owner of the copyright.

23.This proviso will come into play only where the author makes a work in the course of his employment under a contract of service. In the

instant case the respondent as the author of the work made the cinematograph film and as a producer took the initiative and responsibility for making the work and not under any employment under a contract of service. Therefore, this proviso has no application to the facts of this case.

24. In view of the finding given herein above, the copyright of the respondent is not curtailed by proviso (b) or (c) to Section 17 of the Act. Therefore, we hold that the respondent is the first owner of the copyright of the cinematograph film and the promotional material produced by them. The learned single Judge has also dealt with this issue in detail and has given a categorical finding that proviso (b) and (c) to Section 17 of the Copyright Act will have no application to the facts of this case. We do not find any ground to interfere with this finding.

25. Insofar as the order of the Division Bench reported in [**2012 (1) LW P 330**] that was relied upon by the appellant, it is suffice to say that the said order was passed at the interlocutory stage based on the prima facie consideration of the materials available for the purpose of deciding the interim injunction application. This order being interlocutory in nature cannot be pressed into service when the Court takes up the case for final

hearing after completion of the trial and the entire materials are available before the Court to appreciate and in order to come to a final conclusion. We therefore reject the contention of the learned counsel for the appellant that the learned Single Judge went wrong in not following the orders passed by the Division Bench at the time when he took up the case for final hearing. If we are to endorse the submission made by the learned counsel for the appellant, there will be nothing more for the learned Single Judge to consider except to mechanically confirm the orders passed during the interlocutory stage even during the stage of final hearing. In fact, after the judgment and decree is passed finally in the suit, this interlocutory order automatically merges with the final judgment and decree passed in the suit.

26. With the answer given by us for issue (C) in the points for determination we now proceed to consider issues (A) and (B) framed in the points for consideration.

27. In the cinematograph film produced by the respondent, the appellant is one of the performer along with others like a cameraman, music director, director of the advertisement film etc., and it is a

combination of all these which results in the cinematograph film where the respondent is the author of this entire work and the respondent becomes the first owner of the copyright of this entire work. A person who thus becomes the first owner of the copyright for this entire work, has been conferred with a statutory right for a period of 60 years over the cinematograph film. This statutory right cannot be taken away by a performer in the cinematograph film by virtue of an agreement. In fact Clause 9 in the agreement should be assigned the meaning that as between the appellant and the respondent, the right to produce the cinematograph film and other promotional material will continue for a period of one year and the said Clause does not curtail the copyright of the respondent.

28. We therefore hold that the respondent is entitled to exploit the work for the entire term prescribed under Section 26 of the Copyright Act and is not restricted for a period of one year by the agreement. The learned Single Judge has also dealt with this issue in detail and has given a finding that the right given under Section 26 of the Copyright Act cannot be whittled down by any Clause between the parties so as to defeat the provisions of the statute. We do not find any ground to interfere with this

finding of the learned Single Judge.

29. Since the agreement between the appellant and the respondent for the purpose of the "work" is only for a period of one year as provided in the agreement, there is absolutely no restriction or prohibition for the appellant from endorsing or acting in the advertisement film of other producers who deal with similar products. We accordingly answer issue (E) in the points for determination.

30. We proceed to now decide issue (D) in the points for determination wherein we will deal with the individual right of the appellant as a "performer" falling under the said delition under Section 2 (qq) of the Copyright Act and the effect of the definition of sub Sections (3) and (4) of Section 38 and the insertion of Section 38-A in the Copyright Act.

31. The appellant as plaintiff in the suit has claimed for compensation on the ground that the cinematigraph film and other promotional materials are being exploited by the respondent beyond the period of one year in violation of the agreement. The appellant has

claimed compensation also on the ground that she is not able to endorse similar products of the competitor since the competitor's agreement creates an embargo for the appellant not to promote any other competitive products of other companies. We have already given a finding that there is no bar for the respondent to exploit the cinematograph film and other promotional material since he is the first owner of the copyright. Therefore, the appellant will not be entitled to claim any compensation on this ground. Even otherwise the appellant has not got into the box and it is her father who was examined as PW-1. A reading of the evidence of PW-1 shows that he is not conversant with the facts of the case and he was not even able to say the basis on which the compensation is being sought for. The spark for this suit was the telecast of this cinematograph film on 01.09.2011 in SUN T.V while the movie Aadukalam was broadcasted. P.W-1 was not even personally aware about this fact and he only deposes that one of the staff members informed him. There are absolutely no materials for this Court to award any compensation to the appellant in this case.

32. We have already given a finding that the appellant will fall within the ambit of the definition of "performer". Section 38 of the Copyright

Act originally had sub Sections (3) and (4) which is reproduced hereunder:

“(3)During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely:-

(a)makes a sound recording or visual recording of the performance; or

(b)reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was -

(i)made without the performer's consent; or

(ii)made for purposes different from those for which the performer gave his consent; or

(iii)made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or

(c)broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast

which did not infringe the performer's right; or

(d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast,

shall, subject to the provisions of Section 39, be deemed to have infringed the performer's right.

(4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (1), (2) and (3) shall have no further application to such performance."

33. These sub Sections were deleted by Act 27 of 2012 with effect from 21.06.2012 and a new provision Section 38-A has been added with effect from 21.06.2012. This provision specifically deals with infringement of performer's rights and the Act itself provides for the consequences of such infringement. It is important to take note of Section 38-A (2) which is extracted here under:

"(2) Once a performer has, by written agreement, consented to the incorporation of his

performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film:

Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use".

A reading of this provision makes it very clear that once a performer by a written agreement consents to incorporate that performance in a cinematograph film, the performer thereafter cannot object to the producer's right in the cinematograph film, unless there is a contract to the contrary. In the present case the appellant having consented to incorporate her performance as an actor in the cinematograph film produced by the respondent who is the author of it, the appellant cannot stop the respondent from enjoying their producer's right. There is no contract to the contrary in this case and even the agreement dated 29.12.2008 does not contain any Clause preventing the respondent from exercising his absolute right as the producer of the cinematograph film.

34. The lack of some kind of right to the performance of an actor, musician, dancer and so on was a great lacuna in the Copyright Law. This lacuna was attempted to be filled up and remedied for the first time by Copyright (amendment) Act, 1994 by introduction of Section 38 into the Act which specifically deals with a performers right. These rights are somewhat analogous to broadcast reproduction rights. In order to further strengthen the rights of performers, sub Section (3) and (4) of Section 38 was deleted and a new provision was added as 38-A which deals with exclusive right of performers.

35. We have already discussed the impact of Section 38-A (2) and held that the appellant having consented to the incorporation of her performance in the cinematograph film she cannot object to the respondent's right as producer in the cinematograph film since there is no contract to the contrary.

36. What is left now for the appellant is the right given by proviso to sub Section (2) of Section 38-A which deals with the right of the performer to get royalties in case her performance is put to commercial use. The

present suit was filed during September 2011 and as on that date Section 38-A was not in force and it came into force only on 21.06.2012 during the pendency of the suit. A suit can be decided only based on the rights as it prevailed on the date of filing of the suit. It is true that a Court can take note of even a subsequent development in order to do substantial justice between the parties. Even for doing this there must be sufficient materials available by way of oral and documentary evidence. In the instant case there are absolutely no materials to fix the entitlement of the appellant in terms of royalties. We are also taking into account the fact that right through the proceedings, while the suit was pending and while this appeal was pending, there was an interim order that was restraining the respondent from exploiting the cinematograph film and other promotional materials. Therefore, eventually from 2011 onwards the respondent was not in a position to put the cinematograph film and the promotional material to commercial use.

37. The learned Single Judge has taken into consideration all aspects of this case and after a detailed discussion, the suit has been dismissed by giving sufficient reasons. This Court does not find any ground to interfere with the findings of the learned Single Judge. We do not find any merits in

the present appeal.

38.In the result, this OSA stands dismissed. However, the judgment and decree in the suit as confirmed in this appeal, will not stand in the way of the appellant to independently workout her entitlement for royalties which right has been given to her by proviso to sub Section (2) of Section 38-A of the Copyright Act, 1957. Considering the facts and circumstances of the case there will be no order as to costs.

(M.M.S.,J.) (N.A.V.,J)

25 .06.2018

Index:Yes/No
Internet: Yes/No
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Kp

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M.M.SUNDRESH, J.
and
N.ANAND VENKATESH, J.

KP



Pre-Delivery Judgment
in
OSA.No.269 of 2017

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