

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE ABDUL QUDDHOSE

O.S.A.No.6 of 2018

and

C.M.P.No.467 of 2018

Shanthi Thiagarajan

Proprietrix, Staar Movies. .. Appellant/Appellant/Plaintiff

-vs-

1.KE.Gnanavelraja

2.Vignesh Sivan

.. Respondents/Respondents/Defendants

Appeal filed under Order XXXVI Rule 1 of O.S. Rules read with clause 15 of the Letters Patent against the Fair and Decretal Order dated 05.01.2018 made in O.A.No.3 of 2018 in C.S.No.10 of 2018 on the file of original side of this Court.

OA.Prayer .3 of 2018:To grant an order of ad interim injunction restraining the Respondents,by themselves, their partners, men, servants, agents, distributors representatives or any one claiming through or under them from in any manner infrining the applicants copyright in the rights over the original movie SPECIAL 26 by producing, directing, distributing , releasing screening or communicate to the public the cinenmatograph film under the title THANA SERNDHA KOOTAM or in any other name or in any other manner whatsoever pending disposal of the suit.

For Appellant : Mr.AR.L.Sundaresan, Sr. Counsel  
for Mr.K.Harishankar

For Respondents : Mr.P.S.Raman, Sr. Counsel  
for Mr.Vijayan Subramanian/R-1  
: Mr.R.Krishnamurthy, Sr. Counsel  
for Mr.Vijayan Subramanian/R-2

## J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

This appeal is directed against a judgment and order dated 05.01.2018 passed by the learned Single Judge rejecting the application being O.A.No.3 of 2018 filed by the appellant plaintiff in the Commercial Suit being C.S.No.10 of 2018 for an order of interim injunction, inter alia, restraining the defendant respondents from releasing the film "Thaana Serntha Kootam", hereinafter referred to as 'TSK'.

2. The appellant plaintiff is the Proprietrix of a Proprietor Firm being 'Staar Movies' engaged in the business of production and distribution of cinematograph films. The appellant plaintiff claims to have produced and distributed reputed films and also acquired rights for remake of films in other languages as part of a business, which, as aforesaid, she carries on under the name and style of 'Staar Movies'.

3. In 2008, M/s.Viacom 18 Medial Private Limited, hereinafter referred to as 'Viacom' produced and distributed the film 'Special 26'. We need not discuss the plot of the film which is not really relevant to the question involved in this appeal.

4.The film 'Special 26' distributed by Viacom was directed by Neeraj Pande who also wrote the script thereof. The producers of the film were M/s.White Frame Pictures and Friday Film Works Private Limited.

5.By an agreement dated 25.07.2012 executed by and between M/s.White Frame Pictures and Friday Film Works Private Limited and Viacom, Viacom acquired distribution as well as re-make rights of the film 'Special 26'. It is pleaded that by virtue of the agreement dated 25.07.2012, Viacom obtained the right to re-make the said movie 'Special 26' in various languages and also to assign the re-make rights.

6.By an agreement dated 19.08.2013, Viacom assigned rights to re-make the film 'Special 26' in four regional languages, namely, Tamil, Telugu, Malayalam and Kannada to the appellant plaintiff. According to the appellant plaintiff, she has paid the entire consideration as stipulated in the agreement.

7.By virtue of the aforesaid agreement, the appellant plaintiff acquired the right to remake, dub or sub-title the film 'Special 26' in any of the four languages referred to above and other foreign languages. According to the appellant plaintiff, in or about the year 2016, she commenced production

of the film 'Fever 26' in Kannada, which was to be a remake of the Hindi film 'Special 26'.

8. In the application for interim injunction, it is pleaded that, in September 2016, one M/s.RPP Film Factory represented by Prashanth.P., having its office at 11/11, Sree Apartments, Circular Road, United India Colony, Kodambakkam, Chennai 600 024, approached the appellant plaintiff for assigning of re-make rights of the film 'Special 26' in Tamil and Telugu.

9. An agreement was executed by and between the appellant plaintiff and the said M/s.RPP Film Factory whereby the appellant plaintiff assigned the rights to re-make the film 'Special 26' in two languages, namely, Tamil and Telugu, to M/s.RPP Film Factory. The judgment and order under appeal records that it is not in dispute that the agreement between the appellant plaintiff and M/s.RPP Film Factory conferred on M/s.RPP Film Factory the right to further assign the re-make rights of the film 'Special 26' in Tamil and Telugu. It appears that on 23.9.2016, M/s.RPP Film Factory executed an agreement assigning its remake rights to the defendant Respondent No.1.

10. According to the appellant plaintiff there were unverified rumours that the Hindi film 'Special 26' was being re-made in Tamil. The Tamil movie titled "Thaana Serntha Koottam" (TSK) starring Surya Sivakumar, Keerthi Suresh and Ramya Krishnan amongst others was a remake of the Hindi film 'Special 26'. However, since the rumours were unverified, the appellant plaintiff decided to wait and watch (paragraph 12). Later, information surfaced that the defendant respondent No.2 was directing the said Tamil film TSK which was remake of 'Special 26'.

11. According to the appellant plaintiff, she waited till advertisements and promotional activities of the film 'TSK' confirmed that the movie was a re-make of the Hindi film 'Special 26'. On 22.12.2017, the attention of the appellant plaintiff was drawn to a wikipedia page, which stated that the film 'TSK' was an adaptation of the Hindi film 'Special 26'. At around the same time, the appellant plaintiff came across other news items and publications to the effect that 'TSK' was an adaptation of the Hindi film 'Special 26'.

12. The appellant plaintiff claims that the agreement between the appellant plaintiff and M/s.RPP Film Factory had lapsed by reason of non-compliance of provisions thereof and in particular, the requirement to commence production of the remake film within 21.09.2017. The agreement having lapsed, the remake rights reverted to the appellant plaintiff and the appellant plaintiff alone has the right to remake the film.

13. The plaintiff appellant also submits that the agreement between the plaintiff appellant and Viacom clearly provided for acknowledgment of the contribution of original copyright holders in the new film as remade.

14. It is alleged that TSK has been promoted as written and directed by Vignesh Sivan i.e., the second respondent, in contravention of the assignment agreement. The defendant respondents through their counsel assert that the contributions of the original story writer of the film 'Special 26' and other original copyright holders have duly been acknowledged.

15. It is not in dispute that the film Special 26 and its script qualify as cinematograph film and literary work respectively. The question is whether the defendants have acquired re-production rights as contended by them. There can hardly be any doubt that the defendants have a good defence in view of the assignment agreement dated 21.9.2016 between the plaintiff appellant and RPP Film Factory and the subsequent assignment agreement dated 23.9.2016 between RPP Film Factory and the defendant Respondent No.1. The petitioner has prima facie parted with her right to remake and/or dub the film in Tamil and Telugu.

16. Whether the defendants have contravened any conditions of the assignment agreement assigning to them the right to remake the film requires to be adjudicated in the suit. The question is whether an interim order should have been granted by the learned Single Bench as prayed for in the application.

17. For grant of an interim order of restraint, three factors are vital - (i) whether the applicant has been able to make out a very good prima facie case; (ii) whether the balance of convenience lies in favour of the grant of ad-interim relief; (iii) whether monetary compensation will provide the applicant with adequate relief; and (iv) whether there has been delay or laches on the part of the applicant in applying for interim relief.

18. As observed above, the plaintiff appellant assigned her rights to RPP Film Factory, giving RPP Film Factory the right to further assign the right to remake the film "Special 26" in Tamil and Telugu. RPP Film Factory has assigned this right to the defendant respondents.

19. Whether the right included the right to dub film in Tamil or Telugu or both is a matter of interpretation. Prima facie, the right that is given to the defendant Respondent No.1 is to remake and/or dub film in Tamil and Telugu, but no other

language.

20. To adjudicate the balance of convenience, the Court is to consider which party would suffer greater prejudice, the defendant respondents by grant of interim order if the suit ultimately fails, or the plaintiff appellant by refusal to grant interim relief, if the suit ultimately succeeds.

21. The film is due to be released on 12.01.2018. The film has already been remade. There is ex facie an agreement between RPP Film Factory and the defendant respondents. The comparative loss suffered by the defendant respondents if the suit ultimately fails would be much greater than the loss suffered by the plaintiff appellant if the suit ultimately succeeds, for the plaintiff appellant could be monetarily compensated.

22. Furthermore, the production commenced long ago. The plaintiff appellant had obviously not been vigilant in protecting her rights. She, admittedly, heard rumours of production of the film TSK but did not take steps to ascertain whether it was a remake of the Hindi Film "Special 26". The plaintiff appellant has prima facie been negligent and her conduct smacks of laches in protecting her right. Furthermore, as observed above, monetary compensation will provide the plaintiff appellant the adequate relief.

23. In any case, the agreement between the plaintiff appellant and the RPP Film Factory contains an arbitration clause. As an assignee of the rights under the said agreement, the defendant Respondent No.1 is also bound by the arbitration agreement.

24. It is true that copyright is a right in rem. However, in case of infringement of copyright by an individual, the action may not be an action in rem, but an action in personam, as against the infringer of the copyright. The above view, however, is only a prima facie view to be decided in the suit.

25. We find no ground to interfere with the judgment and order under appeal. We make it clear that the observations made in this judgment and order are prima facie observations which will not influence the suit and/or any proceedings in the suit in any manner whatsoever. The appeal is, therefore, dismissed. No costs. Consequently, C.M.P.No.467 of 2018 is closed.

26. Mr.AR.L.Sundaresan, learned Senior Counsel submits that the film should acknowledge the original copyright holders and give credit for their respective contributions and the film as remade should be screened in the presence of the plaintiff appellant and/or her representatives. Mr.P.S.Raman, learned

Senior Counsel appearing on behalf of the defendant Respondent No.1 submits that credit has been given to Mr.Thiagarajan of Staar Movies and the original copyright holders of the film "Special 26". Mr.Raman undertakes that the defendant respondents shall also screen the relevant part of the film containing the credits in the presence of the appellant plaintiff and/or her representatives.

Sd/-  
Assistant Registrar(CO)

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Sub Assistant Registrar

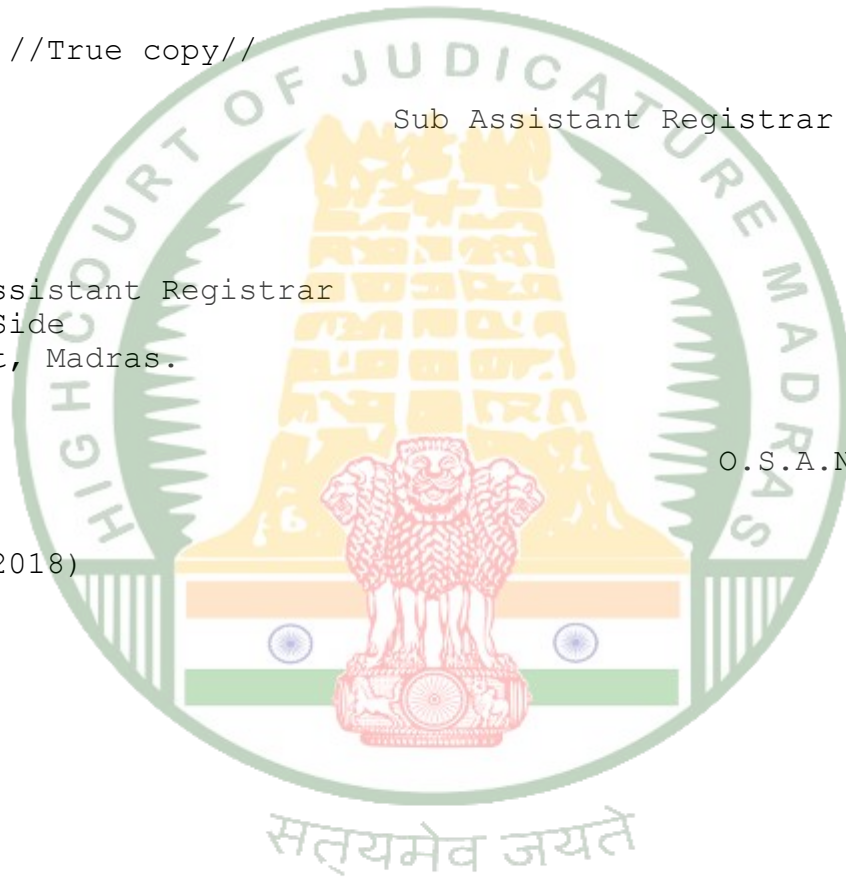
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To

The Sub Assistant Registrar  
Original Side  
High Court, Madras.

O.S.A.No.6 of 2018

AD(CO)  
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