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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 9th October, 2018

+ **CS (COMM) 1163/2018 & I.A. 13817/2018**

JUNGLEE PICTURES LIMITED Plaintiff

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Rishi Agrawala, Ms. Niyati
Kohli and Ms. Aarushi Tikku,
Advocates. (M:9818690207)

versus

**JOY THOMAS PROPRIETOR OF
M/S JUBILEE PICTURES** Defendant

Through: Mr. Jayant Mehta with Mr. Ankur
Kulkarni, Mr. Susheel Cyriac, Mr.
Chacko Simon nad Mr. Rahul
Kukreja, Advocates. (M:9819876406
& 9920753202)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. The Plaintiff, claiming to be the producer of the Hindi feature film 'BADHAAI HO' has filed the present suit. The film is slated to be released on 19th October, 2018. Plaintiff seeks an injunction against the Defendant, who claims that the Plaintiff's film infringes his copyright in the script and movie 'PAVITHRAM'. The plaint seeks the following reliefs:

"i. Pass a decree of permanent injunction restraining the Defendants, their associates, agents, employees, servants, representatives and /or anyone acting on their behalf or connected with them from in any manner (directly or indirectly) extending any groundless threats of any Copyright Infringement

against the Plaintiff and accordingly declare the Notice dated 28.09.2018 by the Defendant to the Plaintiff as null and void, and unenforceable and consequently permanently restrain the Defendants from instituting the Copyright Right infringement suit/proceedings in respect of Plaintiffs Copy rights in the cinematographic film "Badhaai Ho";

ii. Pass a decree of permanent injunction restraining the Defendants, their associates, agents, employees, servants, representatives and /or anyone acting on their behalf or connected with them from in any manner (directly or indirectly) creating any hindrance in respect of the release and commercial exploitation of the cinematographic film "Badhaai Ho;"

2. The relief sought is in the nature of a suit seeking injunction against groundless threats under Section 60 of the Copyright Act, 1957. The suit was listed on 5th October, 2018 on which date this Court had issued summons and notices to the Defendant returnable for today.

3. Mr. Jayant Mehta, learned counsel for the Defendant, upon instructions, submits that his client has filed a copyright infringement suit seeking injunction and declaration in the District Court at Kottayam, Kerala.

The prayers in the said suit are as under:

“a) Declare that the movie ‘Badhaai Ho’ produced by the defendants 1 to 8 is a copyright infringement of the plaintiff’s movie ‘Pavithram’, or a portion of it, and a Hindi adaption of Pavithram’s screenplay/movie-script and story, or a portion of it;

b) Pass a permanent prohibitory injunction restraining the defendants from releasing, screening, exhibiting, broadcasting, streaming or otherwise disseminating to public in any manner, the movie ‘Badhaai Ho’ or any portion of it, without obtaining license from the plaintiff.”

4. It is further submitted by learned counsel for the Defendant that the suit was listed today before the District Court at Kottayam and the Plaintiff herein has entered appearance. The order passed by the Court is not yet available, however, as per his instructions, the Court has directed that the injunction application would be considered, after viewing of the films on 13th October, 2018.

5. The Defendant also challenges the territorial jurisdiction of this Court on the ground that no cause of action has arisen herein. Mr. Jayant Mehta, however, upon instructions, undertakes that his client would not write to any exhibitor or distributor of the Plaintiff, issuing any threats in respect of the film 'BADHAAI HO' and his client would be bound by the orders that may be passed in the copyright infringement suit.

6. In view of the fact that the Defendant has preferred the suit for infringement of copyright, groundless threats no longer survive, as per Section 60 of the Copyright Act, which reads as under:

“Section 60 Remedy in the case of groundless threat of legal proceedings. – *Where any person claiming to be the owner of copyright in any work, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of an alleged infringement of the copyright, any person aggrieved thereby may, notwithstanding anything contained in section 34 of the Specific Relief Act, 1963, institute a declaratory suit that the alleged infringement to which the threats related was not in fact an infringement of any legal rights of the person making such threats and may in such suit –*

- (a) obtain an injunction against the continuance of such threats; and*
- (b) recover such damages, if any, as he has sustained by reason of such threats:*

Provided that this section does not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of the copyright claimed by him.”

7. The Proviso to the section extracted above is clear to the effect that if an infringement action is filed, Section 60 would not apply. Under these circumstances, the present suit is disposed of taking the said statement on behalf of the Defendant as recorded in paragraph 5 above, on record and accepting the same. The same is without prejudice to the objection of the Defendant relating to territorial jurisdiction. Parties shall, however, be free to communicate the orders, if any, that may be passed in the said copyright infringement suit.

8. The suit is disposed of in the above terms. All pending I.As. also stand disposed of.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 09, 2018/dk