



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 10th DAY OF MAY 2019

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

O.A. Nos.175 & 176 of 2019  
and  
A. Nos.2236 and 2237 of 2019  
in  
C.S. No.150 of 2019

Mr.B.Pradeep  
Proprietor of Diya Movies  
66/70, Palani Andavar Koil Street,  
Vadapalani, Chennai 600 026. ... Applicant/Plaintiff  
(in O.A. Nos.175 & 176 of 2019)

-Versus-

1. All in Pictures  
3C, 2nd Block,  
Bajaj Apartments, 5th Cross Street,  
Nandanam Extension, Chennai 600 035.
2. Goldmines Telefilms Pvt. Ltd.,  
Plot No.45, Ganpati Bhavan  
M.G.Road, Goregaon (West)  
Mumbai 400 062. ... Respondents/Defendants  
(in O.A. Nos.175 & 176 of 2019)

**O.A. No.175 of 2019:-**

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the 1st Respondent, their men, agents, successors-in-business, assigns, representatives or any person claiming through or under them from alienating, releasing, exhibiting, distributing, assigning, transferring, selling, offering for sale and otherwise using in any manner whatsoever the said "Hindi and all other North Indian languages Dubbing Rights" to any other person, in any manner whatsoever, pending disposal of the Suit.

**O.A. No.176 of 2019:-**

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the 1st Respondent, its men, servants, agents, authorized representatives, successors and any other persons authorized to act for and on its behalf from in any manner theatrically releasing and/or broadcasting vide satellite, the cinematograph film titled "GORILLA" either in Tamil language or Telugu language starring actor Jiva, Shalini Pandey and others, directed by Don Sandy, pending disposal of the Suit.

**A. Nos.2236 and 2237 of 2019:-**

M/s.All in Pictures  
3C, 2nd Block, Bajaj Apartments,  
5th Cross Street,  
Nandanam Extension,  
Chennai 600 035. ... Applicant/1st Respondent/1st Defendant

-Versus-

1. Mr.B.Pradeep  
Proprietor of Diya Movies  
66/70, Palani Andavar Koil Street,  
Vadapalani,  
Chennai 600 026 ... Respondent/Applicant/Plaintiff
2. M/s.Goldmines Telefilms Pvt. Ltd.,  
Plot No.45, Ganpati Bhavan  
M.G.Road, Goregaon (West)  
Mumbai 400 062. ... 2nd Respondent/2nd Respondent/  
2nd Defendant

**A. No.2236 of 2019:-**

Application praying that this Hon'ble Court be pleased to vacate the interim injunction granted in O.A. No.175 of 2019 in C.S. (Comm.) No.150 of 2019 dated 21.02.2019.



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**A. No.2237 of 2019:-**

Application praying that this Hon'ble Court be pleased to vacate the interim injunction granted in O.A. No.176 of 2019 in C.S. (Comm.) No.150 of 2019 dated 21.02.2019.

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

For the sake of convenience, the Parties are described as per their original nomenclature assigned to them in the suit.

2. The Plaintiff had filed C.S.(Comm) No.150 of 2019, seeking for the following relief:

a) Permanent injunction, restraining the defendants, their men, agents, successors-in-business, assigns, representatives or any person claiming through or under them from in any manner exploiting the plaintiff's sole and exclusive "Hindi and all other North Indian languages Dubbing Rights" excluding Tamil, Telugu, Kannada and Malayalam in the movie titled "GORILLA", amounting to copyright infringement, by claiming any rights over the said Hindi dubbing rights already assigned to the Plaintiff;



b) Permanent injunction, restraining the 1<sup>st</sup> Defendant, their men, agents, successors-in-business, assigns, representatives or any person claiming through or under them from alienating, releasing, exhibiting, distributing, assigning, transferring, selling, offering for sale and otherwise using in any manner whatsoever the said "Hindi and all other North Indian languages Dubbing Rights" to any other person, in any manner whatsoever;

c) To direct the Defendant No.2 to surrender to the Plaintiff the audio, visual, publicity footages, physical prints and/or digital prints/copies of the film "GORILLA" received from the Defendant No.1 for destruction and any other materials in Defendant No.2's possession, which amounts to infringing the exclusive dubbing rights of the Plaintiff;

d) the Defendant No.1 be ordered to pay to the Plaintiff a sum of Rs.30,00,000/- as liquidated damages for violating the terms of the Deeds of Assignment and Indemnity dated 20<sup>th</sup> January, 2018;

e) for costs; and

f) for such other and further reliefs as the nature and circumstances of the case may require and thus render justice.



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3. Along with the main suit, the Plaintiff filed Original Applications with the following interim prayer:

i) **O.A.No.174 of 2019** - To grant an order of interim injunction restraining the respondents, their men, agents, successors-in-business, assigns, representatives or any person claiming through or under them from in any manner exploiting the applicant's sole and exclusive "Hindi and all other North Indian languages Dubbing Rights" excluding Tamil, Telugu, Kannada and Malayalam in the movie titled "GORILLA", amounting to copyright infringement, by claiming any rights over the said Hindi dubbing rights already assigned to the Applicant, pending disposal of the suit.

ii) **O.A.No.175 of 2019** - To grant an order of interim injunction restraining the 1<sup>st</sup> Respondent, their men, agents, successors-in-business, assigns, representatives or any person claiming through or under them from alienating, releasing, exhibiting, distributing, assigning, transferring, selling, offering for sale and otherwise using in any manner whatsoever the said "Hindi and all other North Indian languages Dubbing Rights" to any other person, in any manner whatsoever, pending disposal of the Suit.



iii) O.A.No.176 of 2019 - To grant an order of interim injunction restraining the 1<sup>st</sup> Respondent, its men, servants, agents, authorized representatives, successors and any other persons authorized to act for and on its behalf from in any manner theatrically releasing and/or broadcasting vide satellite, the cinematograph film titled "GORILLA" either in Tamil language or Telugu language starring actor Jiva, Shalini Pandey and others, directed by Don Sandy, pending disposal of the Suit.

4. On 21.02.2019, this Court, finding a balance of convenience in favour of the Plaintiff, had granted interim injunction in the Original Applications, for a period of four weeks in addition to issuing both Court and Private notice. Subsequently, the 1<sup>st</sup> Defendant took out three Application Nos.2235 to 2237 of 2019, seeking to vacate the interim orders granted by this Court on 21.02.2019 and on 26.03.2019, this Court, while vacating the interim order in O.A.No.174 of 2019, had observed as follows:

"14. Hence, this Court is of the view that the bi-lingual Suit movie GORILLA shall be released on the date that may be specified or fixed by the 1st Defendant. With regard to the dubbing of the Suit movie from Telugu, this Court holds that the same shall not be released in any other language either by the Plaintiff or by the 2nd Defendant or by anyone, till a final decision is taken in the Applications in O.A.Nos.175 and 176 of 2019. It is made clear that if the 1st Defendant has got any other right, this order will not prevent them from exercising the same.



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15. In fine, **the interim order granted in O.A.No.174 of 2019 is vacated. Application No.2235 of 2019 is ordered as prayed for.**

17. As regards Applications in O.A.Nos.175 and 176 of 2019 are concerned, interim order granted therein stands modified to the extent mentioned supra and that whether the interim order granted in the said Applications will continue or be vacated, will be decided in detail, as the date of release of the Suit film is slated in May 2019.

18. List the Original Application Nos.175 and 176 of 2019 and Application Nos.2236 and 2237 of 2019 in the above Civil Suit, for hearing, on 09.04.2019."

5. It was the case of the Plaintiff, who is the Proprietor of Diya Movies that Diya Movies is a reputed production house and film studio, involved in the business of dubbing, remaking, production, acquisition, co-production, promotion, marketing and distribution of various cinematographic films and audio-visual content in various Indian languages. It is the further case of the Plaintiff that the 1st Defendant, a partnership concern, has been holding the exclusive rights of 'Hindi and all other North Indian Languages Dubbing Rights', including all the languages written and spoken in India (excluding Tamil, Telugu, Kannada and Malayalam) of the Cinematographic film titled "GORILLA" in Tamil language.

6. According to the Plaintiff, there was an Agreement dated



20.01.2018 between the Plaintiff and the 1<sup>st</sup> Defendant, by which, the 1<sup>st</sup> Defendant has assigned "Sole and Exclusive Dubbing Rights" of the Cinematograph film titled "GORILLA" in Hindi and all other North Indian Languages, Dubbing Copyrights with an exception to four South Indian languages (Tamil, Telugu, Kannada and Malayalam) for a total consideration of Rs.2,50,00,000/- (Rupees Two Crores and Fifty Lakhs) in favour of the Plaintiff and as per the Deed of Assignment dated 20.01.2018, the following exploitation rights, amongst other rights, vest solely and exclusively with the Applicant:

"Exploitation Rights" for the dubbed version means All Commercial, Non-Commercial, Theatrical, Non-Theatrical, linear, non-linear, subtitling in all languages, song video rights, satellite rights including DTH, Pay TV, Satellite Subscription, TV, Satellite Free to Air, Free TV, DBS, Satellite VOD, Satellite NVOD, Satellite delivered and/or Satellite related all rights, Satellite Television, Broadcasting rights (including ..."

7. As per Clause 4 and Annexure I of the said Agreement, the Plaintiff has been *inter alia* assigned and transferred the sole, exclusive and irreversible rights as contemplated under the Agreement for the territory of "Entire World" and the rights include, but are not limited to the following:

(a) Right to distribute non-theatrical or sell the said Film to any other party and/or to use or exploit the same either in part or full with any edits, modifications, deletions,



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additions, dubbing, voice-over, etc in the said languages, sun-titling in all languages and in any part of contracted territories by means of any technology now known or hereafter developed. This includes the right to make and use tapes of songs, dialogues, scenes, extracts and/or combinations thereof of the said Film ..."

8. It was stated by the Plaintiff that based on the agreement, a sum of Rs.2 Crores have been paid by the Plaintiff, thereby, the Plaintiff became the exclusive owner of the Hindi dubbing rights as assigned by the Defendant No.1 and re-assignment of the same rights to the Defendant No.2 by the Defendant No.1 would render in the Plaintiff and Defendant No.2 overlapping rights and huge monetary loss for the Plaintiff. It was also stated by the Plaintiff that the cause of action arose on 20.01.2018, when the Defendant No.1 assigned the "Sole and Exclusive Rights" of the "Hindi and all other North Indian Languages Dubbing Rights", excluding southern Indian Languages and that the payment of Rs.2 Crores have duly been made to the Defendant No.1 in terms of Clause 5 of the Agreement on different dates. Therefore, any alienation, assignment and transfer of the Hindi dubbing rights to any other third party by the Defendant No.1 would cause great harm and serious loss to the Plaintiff's business. It was further stated by the Plaintiff that he would be entitled to the liquidated damages of Rs.30,00,000/- and that he reserves his rights to arrive at the quantum of damages after verifying the books of accounts of the



Defendants. Hence, it was prayed that as there is a prima facie case and balance of convenience in favour of the Plaintiff, the Interim Orders granted by this Court may be made absolute.

9. Learned counsel for the Plaintiff has submitted that in the film "GORILLA", a bilingual film to be made in Tamil and Telugu, even though it has been stated that there is a difference of 25 minutes between the said two films, as per the agreement dated 20.01.2018, no re-assignment could be extended to anyone, much less the Defendant No.2 by the Defendant No.1, which will ultimately affect the rights of the Plaintiff. The contention of the learned counsel for the Plaintiff was that the statements made by the Defendant No.1 that the dubbing rights alone have been given to the Plaintiff and there is no copyright infringement of the film, are totally false. It is no doubt true that the dubbing rights would commence only after 90 days from the date of release of the movie, the remaking of the movie in Telugu will ultimately defeat the very purpose of the agreement, thereby the Plaintiff will be put to a great loss.

10. On the side of the Defendants, it was submitted that Section 2(f) of The Copyright Act, 1957 defines the term 'cinematographic film' as under:

"any work of visual recording on any medium



produced through a process from which a moving image may be produced by any means 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."

According to the Defendants, the rights in dispute, which the Plaintiff claims to hold as per his pleadings is the "sole and exclusive dubbing rights" of the Tamil film Gorilla, a literary work, which are independent rights distinct from copyright in cinematographic film as such and the Defendant No.2 does not claim any rights from the Tamil movie "GORILLA", as the Defendant No.2 has acquired the dubbing rights only from Telugu film "GORILLA". It was pleaded by the Defendant No.2 that it was duly admitted by the Plaintiff himself that the Defendant No.1 has assigned the dubbing rights of the bilingual Telugu film "GORILLA", which is distinct from the Tamil film "GORILLA" having 25 minutes difference and therefore, no prima facie case has been made out in favour of the Plaintiff.

11. The Defendant No.1 has categorically stated that in terms of the Agreement dated 20.01.2018, the Plaintiff has no right to claim more than what is assigned to him vide the Deed of Assignment and the Plaintiff has been assigned only the translation of literary work i.e., dialogues and hence, the



dubbing rights assigned to the Plaintiff is nothing more than that of a translated work from that of the original work of the 1<sup>st</sup> Defendant. It was further stated that the Plaintiff does not have any right over the cinematographic film "GORILLA" and the Plaintiff's rights in respect of dubbing accrues only after 90 days of the theatrical release of the film "GORILLA" in May, 2019 and the extension of the interim order dated 26.03.2019 would affect the business of the Defendant No.1 and its marketability. The production of the Telugu movie "GORILLA" is yet to start and the apprehension of the plaintiff is purely imaginary as on today.

12. On a perusal of the pleadings and the submissions put forth on either side, it is seen that the 1<sup>st</sup> Defendant has assigned "Sole and Exclusive Dubbing Rights" of the Cinematograph film titled "GORILLA" in Hindi and all other North Indian Languages, Dubbing Copyrights with an exception to four South Indian languages (Tamil, Telugu, Kannada and Malayalam) for a total consideration of Rs.2,50,00,000/- (Rupees Two Crores and Fifty Lakhs) in favour of the Plaintiff. It is also seen that the "sole and exclusive dubbing rights" of the Tamil film Gorilla has been given to the Plaintiff for the purpose of literary work, which is an independent right, distinct from copyright in cinematographic film.



13. It is not in dispute that the Plaintiff's dubbing rights commence only after 90 days of the theatrical release of the film "GORILLA" and it has been stated by the Defendants that the production of Telugu version would take considerable time. It is also not in dispute that the dubbing, remaking, production, etc., of the movie, if any made by the Plaintiff, should be released only after 90<sup>th</sup> day from the theatrical release of the Tamil Cinematographic movie "GORILLA". The issues raised in these Applications, viz., the Plaintiff has been assigned only the dubbing rights and the translation of literary work i.e., dialogues of the Tamil movie "GORILLA" and that the exploiting the plaintiff's sole and exclusive "Hindi and all other North Indian languages Dubbing Rights" excluding Tamil, Telugu, Kannada and Malayalam in the movie titled "GORILLA", would amount to copyright infringement, have got to be decided only after the evidence is taken, in other words, after full fledged trial. The interim order granted in favour of the Plaintiff cannot go beyond the scope of the main prayer. In the suit, the Plaintiff, amongst various other reliefs, has sought for payment of liquidated damages to the tune of Rs.30,00,000/- by the Defendant No.1 and even assuming that the Plaintiff is going to succeed in the suit, he will be entitled to the liquidated damages, which according to the Plaintiff is not less than Rs.30,00,000/-.



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14. Mr.S.R.Raghunathan, Learned Counsel for the Defendant No.2 has contended that the Defendant No.1 has entered into a Deed of Transfer of copyright on 16.11.2018 with the Defendant No.2 to acquire sole and exclusive dubbing rights in the Telugu film "GORILLA", pursuant to which, the Defendant No.2 has already transferred Rs.50,00,000/- to the Defendant No.1 as signing amount. He has further contended that the Plaintiff has no right over the Cinematographic film "GORILLA" either in Tamil or Telugu, as the Plaintiff has been given the right to dub, which is nothing but a right to translate a literary work and therefore, the interim order has caused serious prejudice to the Defendant No.2. He has also contended that though the Plaintiff had sought for the relief of liquidated damage of Rs.30,00,000/- against the Defendant No.1 in the Plaint, the Defendant No.2 is prepared to deposit the said sum before this Court and the same may be ordered to be kept in a Fixed Deposit scheme. He has also fairly conceded that without production of the movie in Telugu, it is highly impossible for the Defendant No.2 to make Hindi version and therefore, the Hindi Part of Telugu version will be released after 60 days from the date of release of Telugu version.



15. In view of the above submission, this Court is of the considered opinion that it will serve the interest of justice, if the Defendant No.2 is directed to deposit a sum of Rs.30,00,000/- before the Registrar General of this Court, as the making of interim orders absolute will certainly prejudice the rights of the Defendants, more particularly, Defendant No.2.

16. Accordingly, **A.Nos.2236 and 2237 of 2019 filed for vacating the interim orders are ordered** and the Interim Orders dated 21.02.2019, which subsequently stood modified on 26.03.2019 in O.A.Nos.175 and 176 of 2019 are hereby vacated, with the following conditions:

i) The Defendant No.2 is directed to deposit a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) to the credit of C.S. (Comm) No.150 of 2019 before the Registrar General of this Court within a period of one month from the date of receipt of a copy of this order, failing which, the modified interim orders dated 26.03.2019 will automatically come into force and be restored immediately on the expiry of the specified time;

ii) On deposit of Rs.30,00,000/- (Rupees Thirty Lakhs only), the Registrar General shall invest the said sum in the



Indian Bank, Madras High Court Branch, Madras under Fixed Deposit scheme initially for a period of one year and thereafter renewable periodically till the disposal of the suit;

iii) As undertaken by the Defendant No.2, the Hindi version of Telugu Film shall be released after 60 days from the date of release of Telugu Movie.

17. It is made clear that any observation made hereinabove, touching upon the merits of the matter, is only for the purpose of disposal of these Applications and it will not prejudice the rights of the parties to raise all the points that are available at the time of advancement of their arguments in the main suit, by producing both oral and documentary evidences.

18. The Plaintiff is permitted to serve suit summons on the Counsel for the Defendants immediately, if not served earlier and on and from the date of the receipt of suit summons, Written Statements have to be filed by the Defendants within the stipulated time in terms of the provisions of The Code of Civil Procedure, 1908 as amended by The Commercial Courts Act, 2015.



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Registry is directed to list the main suit in the First  
Week of June, 2019 for hearing.

Sd./-S.V.N.J

10/05/2019

//Certified to be true copy//

Dated at Madras this the        day of        2019.

COURT OFFICER(O.S.)

jj 15/05/2019

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