

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.No.154 of 2019 and C.M.P.No.13790 of 2019

Mr.K.Balaji Kumar

...Appellant

-Vs-

1.M/s.Star Polaris
represented by its Partner V.Mathiyalagan
No.181/6, MGY Babu Street, Janaki Nagar,
Valasaravakkam Chennai 600 087.

2.M/s.Etcetra Entertainment
represented by its Partner V.Mathiyalagan,
No.33, Pasumpon Muthuramalingam, Teynampet,
Chennai 600 018.

...Respondents

For Appellant : Mr.M.Sriram

For Respondents: Mr.V.Subramanian

Prayer : Original Side Appeal under Clause 15 of the Letters Patent and Order XXXVII Rule I of the Original Side Rules of the High Court of Madras, 1956 against the Judgment and Decree dated 28.06.2019 in O.A.No.580 of 2019 in C.S.No.358 of 2019 on the original side of this Honourable Court (1st Proviso to Section 7 of Commercial Division and Commercial Appellate Division of High Courts Act, 2019).

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The case comes up again and the learned counsel for the respondents prays for vacating the interim order granted in favour of the appellant on 04.07.2019, directing status quo to be maintained by the parties. The matter pertains to claim of copyright by the appellant / plaintiff with respect to the release of a film name "Kolaiyudhir Kaalam" under the provisions of Copyrights Act, 1957.

2. Learned counsel for the respondents Mr.V.Subramanian submits that the plaintiff / appellant has claimed copyright only on the basis of the title of a book authored by one Sujatha, the copyright of which has been purchased by him. Learned counsel submits that the Copyright law does not apply to such single title and it is not the claim of the plaintiff / appellant that the contents of the novel has been copied by the defendants, who actually produced the film in question, on the basis of some American novel.

3. Learned counsel for the respondents relied upon the following judgments in support of his contentions.

I. R.Radhakrishnan -Vs- A.R.Murugadoss and another, in O.A.No.710 & 711 of 2013 in C.S.No.639 of 2013 dated 29.10.2013.

II.M/s.Lyca Productions -Vs- J.Manimaran and Others in O.S.A.No.63 of 2018, decided on 22.02.2018, in which the Division Bench of this Court, in paragraph No.53 held as follows,

"53. The provisions of the Copyright Act, 1957 and in particular, the wide definition of infringing copy in relation to cinematograph film in Section 2(m)(ii), to mean a copy of the film made on any medium, by any means, makes it clear that the proposition laid down in the judgment of this Court in R.Radhakrishnan, supra and the judgment of the Supreme Court in Krishika Lulla, supra, that there is no copyright in a title, would apply to all feature films."

III. Kanungo Media (P) Ltd., -Vs- RGV Film Factory and Others 2007 (138) DLT 312, wherein the Delhi High Court held as follows,

"10. The case relates to the alleged appropriation of a title. It is not a case where there is any allegation of usurpation of the work of the plaintiff by the defendants. In fact, as seen above, the plot and storyline of the two films is altogether different and there is not even a semblance of similarity between the two.

11. It is common, rather imperative, to give title to literary or entertainment works. Like human beings, literary work produced by the author or the work of entertainment

produced by a producer needs a name. It is only then such work would be identified. The term 'literary title' is used to encompass titles of books, periodicals, newspapers, plays, motion pictures, television series, songs, phonograph records, cartoon features and the like [McCarthy on Trademarks and Unfair Competition, Third Edition (1995) Vol. I].

12. American Courts have taken uniform view that title alone of a literary work cannot be protected by Copyright Law. Copying of a title alone, and not the plot, characterization, dialogue, song etc. is not the subject of Copyright Law. Thus, a copyright on a literary work would not include exclusive right to use the title on any other work. What, therefore, follows is that if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone. Same is the position under Copyright Law in India.

13. However, legal protection for literary titles lies in the field of trademark and unfair competition. In general, such titles are protected according to the fundamental tenets of trademark and unfair competition law. McCarthy has described this and even provided the test which has to be applied while determining the infringement in the realm of trademark as under:

In general, such titles are protected according to fundamental tenets of trademark and unfair competition law. That is, such titles cannot be used by a junior user in such a way as to create a likelihood of confusion of source, affiliation, sponsorship or connection in the minds of potential buyers. For these purposes, titles of literary and entertainment creations and works are treated in much the same way as the trademarks of other commercial commodities.

14. Titles may relate to two types of works, i.e. titles of single literary works and titles of series of literary works. Titles of series of books, periodicals or newspapers do function as a trademark to indicate that each edition comes from the same source as the others and, therefore, such titles are even registrable as trademark. Such 'series titles' enjoy the same protection as usual trademark. The title of a newspaper serves a trademark function to the reader who is shopping among competing newspapers, just as when he or she is shopping among competing household products. Or, for example, where a term has been used in the title of a series of books, it may come to identify and distinguish a source to buyers. If so, it is a trademark for a series of books and is registrable as such. This trend is picked up even in television plays and motion pictures. We have television serials which run into hundreds of episodes. We have the examples of particular motion pictures made in series. The trend which started in Hollywood with 'The Godfather', 'Rocky', 'Die Hard', 'Mission Impossible', 'The Matrix', 'Jurassic Park' etc. has percolated in Indian film industry as well with the movies 'Hera Pheri - Phir Hera Pheri', 'Dhoom - Dhoom II' and 'Munna Bhai MBBS - Lage Raho Munna Bhai'. It is easy to give trademark protection to such titles of series of literary work etc."

4. Learned counsel for the respondents, therefore, submitted that the respondents have invested huge amount in the production of the said movie and have completed all certification works and advertisement etc., and the interim order granted by this Court is causing prejudice and loss to the respondents.

5. On the other hand, the learned counsel for the appellant submitted that the interim order deserves to be continued, during the pendency of the suit.

6. Having heard the learned counsel for both sides, we are of the opinion that the continuation of the blanket status quo, in the facts and circumstances of the present case, will cause irreparable loss to the respondents and if at all the plaintiff / appellant is entitled to any right in the said

matter, if the trial Court determines such right in accordance with law, he can be compensated in terms of money. Therefore, at this stage, in view of the balance of convenience and irreparable loss aspects in favour of the respondents, we are not inclined to continue the said status quo order. We are not inclined to express any opinion on the merits of the case, lest it affects the trial before the trial Court. In these circumstances, we vacate the exparte status quo order dated 04.07.2019.

7. With the above observations, we dispose of the above O.S.A. and request the learned Trial Court to expedite the trial. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

The Sub Assistant Registrar,
(Original Side),
High Court, Madras.

+1cc to Mr.V.Subramanian, Advocate, S.R.No.60298

+1cc to Mr.M.Sriram, Advocate, S.R.No.59518

O.S.A.No.154 of 2019

VP (CO)

RRS (19/08/2019)

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