

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 11TH DAY OF FEBRUARY 2020

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

A.No.9660 of 2019

in

C.S.No.620 of 2012

P.Ponnuchamy,
S/o.K.A.Palanichamy
Co-Director
(Member, Tamilnadu Film Director's Association
Membership No.1525)
No.112 C, Bazaar Street,
Saidapet, Chennai 600 015. ...Applicant/Plaintiff

-Versus-

1.M/s.UTV Motion Pictures
A Division of UTV Software Communications Ltd.,
Rep. by its Authorized Signatory
Thiru.Govind Dhananjeyan,
No.5, Kushkumar Road,
Nungambakkam, Chennai 600 034.

2.Thiru.A.L.Vijay Anand
S/o.Thiru.Alagappan
Director
14/18 Balaji Avenue II Street,
Thirumalaipillai Road,
T.Nagar, Chennai 600 017. ...Respondents/Defendants

Application praying that this Hon'ble Court be pleased to permit the Petitioner above named to amend the Plaint by inserting the following para 16(a) after the end of para 16 in the Plaint;

"16(a).The plaintiff submits that the 1st defendant was having settlement talks with the Plaintiff and later the 1st defendant was acquired by "The Walt Disney Company India".
After such takeover, again, the 1st defendant was having settlement talks with the Plaintiff but all went in vain.

The 1st defendant continues to exploit commercially and infringe the plaintiffs' copyright rights by selling and/or licensing the movie 'Thandavam' in Satellite channel, Vijay TV, broadcasted on 14.02.2013 @ 11 am, as a "Pongal Special Movie" and in online media such as Netflix, You Tube and Amazon prime video and other platforms. Thus, on account of these continuing exploitation and infringing activities, the plaintiff's estimates that the defendant would have at least made a profit of Rs.50 Lakhs since 26.09.2012, till date and such profit earned by the 1st defendant is to be shared equally with the plaintiff. Thus the 1st Defendant is liable to render accounts of such revenue, so that the profit can be ascertained and shared with the Plaintiff. The royalty fixed by the writers association for a movie having budget of more than Rs.10,00,00,000/- is Rs.36,00,000/- which is liable to be paid to the Plaintiff in addition to share of profits made by them. The present movie in question was having a budget of Rs.30 Crores and hence the Plaintiff is entitled to royalty of Rs.36 Lakhs as damages".

And amend the prayer by inserting the following prayer-

(ii)(A) to direct the 1st Defendant to pay a sum of Rs.36,00,000/- towards royalty for the script of the plaintiff used in making the movie "Thndavam".

(ii)(B) to direct the 1st Defendant to render true account of profits made by the 1st defendant by selling the rights of the movie to the Satellite Channel and online media partners such as Netflix, You Tube and Amazon Prime Video, etc, and/or by selling the rights of the movie for remake and dubbing in the Telugu Language or such other language(s).

This Application coming on this day before this court

<https://hcservices.ecourt.gov.in/hcservices/>, the Court made the following order:

Heard the learned counsel for the applicant/plaintiff and the learned counsel for the respondent/defendant.

2. The plaintiff has laid the suit under the Copyright Act alleging infringement of the copyright by the defendants. The specific case of the plaintiff is that, the character, story-line, screen play, scene and situation of his registered story 'Vikramaditan', has been copied in the movie by name 'Thandavam' produced by the defendants. Making out the comparative chart of similarities, the plaintiff has filed the present suit alleging the movie 'Thandavam' produced by the 1st defendant and directed by the 2nd defendant is an infringement of the plaintiff's literary work 'Vikramaditan'. The plaintiff has also sought for permanent injunction restraining the defendants from distributing, exhibiting, telecasting the movie 'Thandavam' in any manner.

3. The suit was presented on 18.09.2012 and taken on file by this Court and numbered as C.S.No.620 of 2012. Along with the suit, the plaintiff has taken out an application for interim injunction and the said application No.790 of 2012 has been heard on merits by this Court and the Court has declined to grant interim injunction and dismissed the same. Thereafter, the pleadings were completed and after the Commercial Courts Act, 2015, came

into force, this Court has determined the jurisdiction on 03.07.2019 holding that the lis being a commercial dispute, commercial division alone have jurisdiction then, the Court has framed issues on 04.10.2019.

4. At this juncture, on 29.11.2019, the plaintiff has filed an application No.9660 of 2019 to amend the plaint by inserting a paragraph and additional prayer for royalty and rendition of accounts. This application is opposed by the defendant on the ground that his application is not only belated but also not bonafide. If it is allowed, it would change the nature of the suit. It is contended in the counter that, if the present application filed under Order VI Rule 17 is allowed, it will amount to introduction of new relief and claim in the suit, which the plaintiff never indented or deliberately omitted his right at the inception of laying the suit, later introduction of new relief based on same cause of action is against the law in force. Hence it ought not to be allowed.

5. The learned counsel for the plaintiff would submit that at the time of filing the suit the film "Thandavam" was not released and therefore he was insisted upon the interim injunction. After dismissal of the interim injunction application, the defendant has released the film "Thandavam" on various dates, which has prompted the application, but the relief now sought is only by way of

consequential relief. If the relief of declaration is allowed, he will be entitled for the royalty. Therefore it is not a new case introduced beyond the cause of action stated in the plaint. In support of his arguments, the learned counsel would rely upon full bench judgment of this Court rendered in **Hi.Sheet Industries Vs. Litelon Limited and Ors** reported in **2007-1-LW 32** and the judgment of the Delhi High Court in **J.C.Bamford Excavators Limited and Ors. Vs. Bull Machines Pvt.Ltd.**, reported in **MANU/DE/0005/2016**.

6. The learned counsel appearing for the defendants would rely upon the judgment of the Hon'ble Supreme Court in **Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others** reported in **(2009) 10 SCC 84**.

7. The short point in this application to be decided is whether an amendment to prayer can be entertained in a commercial dispute after framing of issues and whether it will amount to change of basic character of the suit and introduction of new plea which is barred by limitation.

8. The contention of the application as found in the affidavit in support of the application clearly indicates that the movie was released for public view as early as in

<https://hcservices.ecourts.gov.in/hcservices/> the year 2013 and the Satellite channel Vijay TV

broadcasted it on 14.02.2013 as a Pongal special movie and the plaintiff is continuously exploiting the infringement of copyright since 26.09.2012.

9. The only contention raised by the learned counsel for the applicant for belated filing of the said relief amendment application is that it is a continue cause of action, therefore, there is no limitation. This Court is not able to accept the said submission for a simple reason that Order VI Rule 17 of C.P.C., after the amendment of C.P.C., in the year 2002 has been viewed, not in the liberal way as it was prior to the amendment. The Full bench judgment relied by the learned counsel for the applicant is that the facts of the case pertaining to suit instituted in November 2009, which is much prior to the amendment Act came into force. In the said factual circumstances, full bench of this Court made a reference that limitation is immaterial for allowing amendment of pleadings.

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10. After 2002 C.P.C., amendment and advent of Commercial Courts Act, the appropriate legal position in this matter will be the factors enumerated by the Hon'ble Supreme Court judgment cited by the learned counsel for the respondent. For the convenience sake, the factors enumerated by the Hon'ble Supreme Court in paragraph 63 of its judgment, extracted below:-

"Factor to be taken into consideration while dealing with applications for amendments"

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bonafide or malafide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

11. It is settled proposition of law, any amendment will have prospective effect from the date on which the amendment was sought by the plaintiff. The present application is filed long after the interim injunction

application dismissed by this Court as early on 26.09.2012. The plaintiff has been exploiting the copy right in the movie 'Thandavam' continuously and uninterruptedly for more than 9 years. The plaintiff all along not thought fit to amend his prayer.

12. Being so, the present amendment if allowed, will drastically prejudice the plaintiff. Having acquiescence with the company and kept quiet for 7 years only at the time of examining the witnesses, the present amendment application is taken out by the plaintiff. This application is hopelessly barred by limitation. Hence, this application is dismissed.

Sd./-G.J.J
11.02.2020

//Certified to be true copy//

Dated at Madras this the day of 2020.

सत्यमेव जयते

JJ 19/02/2020

COURT OFFICER(O.S.)

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