

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.03.2020

DATE OF DECISION : 10.03.2020

CORAM

HON'BLE MR.JUSTICE M.SUNDAR

O.A.Nos.1149 of 2019 and 35 of 2020
and
Application No.277 of 2020
in
C.S.No.724 of 2019

Bosco Prabu

.. Applicant in
all applications

Vs.

1.P.S.Mithran

2.Kottapadi Jayaram

Proprietor of KJR Studios,
No.5, 4th Floor, Rapid Skyline Apartment,
8/4, Sreekrishnapuram Street,
Royapettah,
Chennai-600 014.

3.South Indian Film Writers Association,

rep by its President K.Bhagyaraj,
L-33, Flat-1, 2nd Floor, LIG,
Bharathidasan Colony,
K.K.Nagar, Chennai-600 078.

.. Respondents in
all applications

O.A.No.1149 of 2019 has been preferred under Order XIV Rule 8 read with Order XXXIX Rule 1 of Civil Procedure Code seeking to grant an order of adinterim injunction restraining respondents 1 and 2 / defendants by themselves, itself or through its men, servant, agents or any person claiming through or under the respondents 1 and 2 / defendants in any manner from releasing and/or screening or in any print media of the infringed film titled 'HERO' in any form or style on 20th December 2019 or any other date and to pass such further or other orders as this Court may deem fit and proper in the above facts and circumstances of the case.

O.A.No.35 of 2020 has been preferred under Order XIV Rule 8 read with Order XXXIX Rule 1 of Civil Procedure Code seeking to grant an order of interim injunction restraining the respondents 1 and 2, their men, agents, subordinates, representatives, successors in office or anybody claiming through the respondents 1 and 2 from in any manner releasing the satellite or digital exhibition throughout the world in any of world languages in any way either by satellite, relay, online relay, digital relay of original, dubbing or any remake version of the movie titled 'Hero' and to pass such further or other orders as this Court may deem fit and proper in the above facts and circumstances of the case.

A.No.277 of 2020 has been preferred under Order XIV Rule 8 read with Order XXXIX Rule 1 of Civil Procedure Code seeking to grant an order of interim direction directing respondents 1 and 2, their men, agents, subordinates, representatives, successors in office or anybody claiming through respondents 1 and 2 from in any manner describing, depicting or

displaying the name of respondent No.1 as story writer in the movie 'Hero' at all places either by way of theatrical exhibition, in satellite or digital exhibition throughout the world in any of world languages in any way either by satellite, relay, online relay, digital relay of original, dubbing or any remake version including the applicant's name Mr.Bosco Prabu as story writer in the movie titled 'Hero' and to pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Applicant : Mr.A.Thiagarajan, SC
for Mr.M.Sunil Kumar

For Respondents : Mr.T.Mohan
for Ms.Nivedita S.Menon for R-1
Mr.S.Karthikei Balan for R-2
Mr.D.Senthil Kumar for R-3

COMMON ORDER

This common order will dispose of these three applications.

2 Three applications on hand have been taken out by plaintiff in the main suit. There are three defendants in the main suit and defendants 1 to 3 are respondents 1 to 3 respectively in all three applications on hand. From hereon, parties in these applications will be

referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3 Instant lis pertains to a Tamil movie which goes by the title 'Hero' (hereinafter 'suit movie' for the sake of convenience and clarity) directed by first defendant and produced by second defendant. Central theme of the main suit is the script or in other words, the story used by defendants 1 and 2 for making suit movie. While plaintiff has laid the suit claiming that the script / story qua suit movie belongs to him absolutely, defendant No.1 contends that it belongs to him.

4 Third defendant is a registered society registered under the Tamil Nadu Societies Registration Act, 1975. There is no disputation or disagreement between parties that both plaintiff and first defendant are members of third defendant. Plaintiff registered a story / script captioned 'Vetri' with third defendant on 26.04.2017 vide plaint document No.4. Thereafter, more than 1-1/2 years later, first defendant registered a story / script under the caption 'Hero' (describing the caption as 'working title') with third defendant on 19.12.2018 vide plaint document No.11. It is the case of plaintiff that he gained knowledge about suit movie from the teaser and audio release of suit movie on

23.10.2019. It is the case of plaintiff that on gaining knowledge about suit movie, he realised that his story / script registered with third defendant on 26.04.2017 under the caption 'Vetri' has been used by defendants 1 and 2 in their capacity as Director and Producer respectively to make suit movie. On this basis, plaintiff lodged a complaint with third defendant on 29.10.2019 vide plaint document No.9. Third defendant embarked upon the exercise of looking into the Plaintiff's complaint inter-alia by calling for response from first defendant and the minutes of third defendant in this regard is dated 21.11.2019 (plaint document No.13).

5 In the aforesaid backdrop, suit movie was scheduled to be released on 20.12.2019 and therefore, suit was presented by plaintiff in this court on 18.12.2019, after all efforts to put to rest the rival claims for the story / script did not culminate in any resolution. To be noted, instant suit has been filed with prayers for declaration that the story / script used by defendants 1 and 2 for suit movie belongs to plaintiff, for permanent injunction restraining defendants 1 and 2 and their agents, servants, etc., from in any manner releasing and / or screening suit movie on 20.12.2019 or any other date. There is also a

further prayer for appointment of an Advocate Commissioner or a Committee of story writers or experts from the film industry to quantify what according to plaintiff is copying of his script / story 'Vetri' by defendants 1 and 2 qua suit movie and to give a detailed report besides a prayer for compensation of Rs.1,00,01,000/- (Rupees One crore and one thousand only). Usual residuary limb and a prayer for costs have also been made.

6 It is submitted that when the main suit was moved, there was an interim order operating qua suit movie in another suit moved by some one / some entity other than the plaintiff and therefore, interim orders in instant suit was considered superfluous by the Court. To be noted, second defendant Producer was on caveat. Second defendant disputes this trajectory at the time of inception of the suit. This Court deems it appropriate to not to enter into this arena of controversy about what transpired in a prior hearing in another Court. This suit met with two recusals and was ultimately placed before me as a Specially Ordered matter by Hon'ble Chief Justice. When it was placed before me as 'Specially Ordered Case', proceedings dated 14.02.2020 made by this Court and an affidavit dated 21.02.2020 filed by plaintiff are of

relevance. I refrain from extracting 14.02.2020 proceedings and the affidavit of plaintiff dated 21.02.2020, but the same shall be read as an integral part and parcel of this order. Suffice to say that all parties before this Court, namely plaintiff and three defendants requested me to hear the matter and made it clear that they have no reservations of any kind whatsoever.

7 Though there are three applications, in the absence of interim order in the suit in the backdrop as aforementioned controversy, theatrical release of suit movie did happen on 20.12.2019. Second defendant has now filed a memo dated 26.02.2020 saying that they have parted with satellite rights in favour of a private TV channel. However, this court is informed that satellite rights have not been exploited and that other rights, i.e., remake, etc., have also not been exercised. To that extent, all these applications are relevant and prayers therein subsist. It is on this undisputed platform that I heard out these three applications.

8 Mr.A.Thiagarajan, learned senior counsel appearing for counsel on record for plaintiff made submissions which can be broadly summarised as follows :

(a) First defendant has submitted himself

to the examination / exercise made by third defendant with regard to complaint of plaintiff regarding story / script. First defendant having submitted himself to the exercise made by third defendant cannot now wriggle out of the same after realising that the matter is not going his way. It was emphasised in this regard that plaintiff and first defendant are both members of third defendant.

(b) Adverting to proceedings of third defendant dated 21.11.2019, it was submitted that first defendant took the stand before third defendant that he was inspired by a character which goes by the name 'Shaktimaan', but in the pleadings by way of counter affidavit in instant applications, there is no mention about 'Shaktimaan', whereas there is mention about invention made by one Yogeshwari. It was submitted that the stand of first defendant in instant suit is therefore an afterthought, i.e., owing to these contradictions.

(c) Adverting to decision dated 16.12.2019 taken by third defendant, it was submitted that

the plaintiff has made out a prima facie case. This 16.12.2019 decision of third defendant regarding comparison of two stories is in the form of plaint document No.17 before this Court.

(d) It was pointed out that first defendant has admitted the similarity, but has only argued that it is quite possible that two different people can think alike independent of each other.

9 Mr.T.Mohan, learned counsel appearing for counsel on record for first defendant made submissions, summation of which is as follows :

(a) It was submitted that third defendant is not akin to escrow agent. Third defendant merely receives story / script from its members, gives acknowledgement and also returns the script after engrossing its seal in each page and putting it in a sealed envelope. In other words, third defendant is not a repository qua stories / scripts is the point.

(b) It was emphasised that pleadings of plaintiff is that story / script registered by plaintiff has been leaked to first defendant, whereas the burden of the song now is different.

(c) It was urged that neutrality of third defendant is suspect as the findings returned by third defendant are untenable.

(d) Locus of third defendant was also questioned by saying that it is not copyright society.

10 Mr.S.Karthikei Balan, learned counsel for second defendant Producer made submissions, summation of which is as follows:

(a) The Teaser qua suit movie runs for only 1 minute and 39 seconds. From this teaser and audio, third defendant could not have come to the conclusion that the story / script has been copied.

(b) Suit movie does not have a single scene which corelates with the script / story 'Vetri'.

(c) Adverting to plaint document No.10

being bullet points of comparison of two stories, it was submitted that inferences are wholly erroneous.

11 Mr.D.Senthil Kumar, learned counsel for third defendant made submissions and broad encapsulation of same is as follows :

(a) It was emphasised that both petitioner and first defendant are members of third defendant and third defendant embarked upon the exercise of comparison and does such exercises only in the interest of the industry.

(b) First defendant having subjected himself to the exercise cannot now raise doubt about neutrality of third defendant after third defendant articulated its inferences.

12 This Court carefully considered the rival submissions which have been set out supra. To be noted, elaborate arguments were made before this Court.

13 This Court noticed certain aspects which are of immense relevance. There is no dispute that both plaintiff and first defendant are members of third defendant society. Law is too very well settled that by-laws of such a society operates as a contract between all its members. After becoming a member and after submitting himself to the exercise embarked upon by third defendant in response to a complaint from plaintiff, it cannot be gainsaid by first defendant that third defendant does not have locus. With regard to copyright aspect of the matter, it may well be a copyright or a right simplicitor.

14 With regard to comparison of two stories / scripts and the conclusion arrived at by third defendant vide document No.10, several submissions were made saying that comparison of each point is incorrect as suit movie is different. This court is of the considered view that such an exercise cannot be undertaken at the interlocutory stage. Reasons are three in number. One is, it is not a mere comparison of plaintiff's story / script, namely plaint document No.4 and first defendant's story / script which is plaint document No.11. It is a comparison with defendants' document filed along with written statement. This can be done only in trial.

15 The submission that first defendant had given only synopsis / short script to third defendant and therefore, comparison is untenable cannot be countenanced at this interlocutory stage. It is to be noticed that third defendant is manned by a veteran in the industry and the comparison has been done inter-alia by this veteran. Further, this is not a lone case in isolation, such issues had erupted in the past and such exercises have been undertaken by third defendant in several cases. In other words, this is an industry practice.

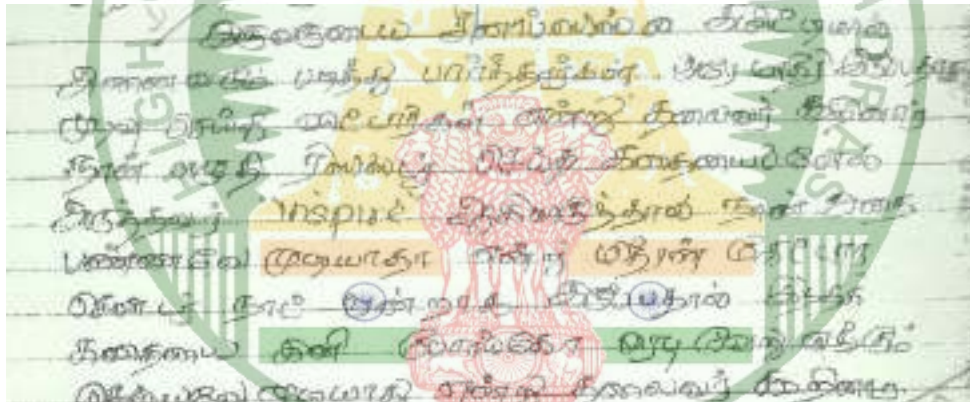
16 With regard to contradictions of plea of first defendant before third defendant and now before this Court, it was submitted that 'Shaktimaan' is just an initiating character. It was submitted by learned counsel for first defendant that thereafter even in plaint document No.13, there is reference to vehicle being run on water and all these are references to Yogeshwari, an inventor in real life, though there is no specific reference to Yogeshwari in plaint document No.10. In the considered view of this Court all these are matter for trial. At the moment, documents referred to are only plaint documents and defendants' documents. In other words, documents filed with plaint or documents filed with written statement have not become exhibits. To put

it differently, documents have not been proved and marked in a manner known to law. It is thereafter that such exercise should be undertaken in the light of deposition. To put it differently, undisputed documents filed with pleadings are to be looked into at this stage only to take a prima facie view, owing to the nature / facts and circumstances of this case. To be noted, it is nobody's case that oral evidence is not necessary in main suit. Also to be noted, no one has resorted to summary judgment plea.

17 In this regard, from letter dated 09.12.2019 from first defendant (placed before this court in 1st defendant's typed set) , it comes to light that first defendant has started raising issues about neutrality of third defendant only after the first session before third defendant on 07.12.2019.

18 Therefore, this court considers it appropriate to examine (a) prima facie case, (b) balance of convenience and (c) irreparable legal injury incapable of compensation being three parameters to decide interlocutory applications of this nature at this stage.

19 With regard to prima facie case, pleadings of first defendant as well as undisputed plaint documents bring to light that burden of song of first defendant is, it is quite possible that two persons can think alike, but yet it can be independent of each other. The most relevant part of this is contained in plaint document No.13 and the same reads as follows :



20 With regard to whether reference to vehicle being run on water is a reference to real life Yogeshwari's invention is a matter for trial and further more, plaintiff is a prior registrant having registered on 26.04.2017, whereas first defendant is latter registrant having registered on 19.12.2018 more than one and half years later. Suit movie is not before this court. Suit movie scenes have to be looked into in trial

before conclusive finding can be returned on plaint document No.10. In any event, there is a prayer for appointment of expert body in plaint itself and it is well open to parties to take this route also. This much about plaintiff making out prima facie case. To put it in a nutshell, plaintiff and first defendant admittedly being members of third defendant society, first defendant's stated position that it is quite possible for two individuals to think alike and still could have thought independent of each other without being guilty of plagiarism and first defendant having submitted himself to the exercise of third defendant leaves this court with the considered view that plaintiff has made out a prima facie case.

21 With regard to balance of convenience, as already mentioned, theatrical release of suit movie has happened and defendants 1 and 2 in their capacity as Director and Producer have seen the colour of the coin. Only exploitation of satellite rights by second defendant's alienee and remake, etc., by first defendant remain. This tilts balance of convenience in favour of acceding to the prayer of plaintiff.

22 With regard to the third parameter of legal injury incapable of compensation, if satellite rights are also fully exploited and

if defendants 1 and 2 also complete the remake/s, plaintiff will obviously be left high and dry, i.e., with nothing even if he ultimately succeeds in the suit. Therefore, the third parameter in such interlocutory applications also operates in favour of acceding to the prayer.

23 Finally, to complete the narrative and capture the trajectory of hearing in its entirety, it is to be pointed out that first defendant pressed into service a judgment of Hon'ble Supreme Court in ***R.G.Anand Vs. Delux Films and others*** reported in (1978) 4 SCC 118. Attention of this court was drawn to paragraph 46, where Hon'ble Supreme Court had laid down certain propositions regarding copyright infringement. What is of relevance is proposition No.6, wherein Hon'ble Supreme Court has clearly held that violation of copyright amounts to an act of piracy and therefore, it must be proved by clear and cogent evidence after applying various tests laid down in this regard. To be noted, ***R.G.Anand*** case has been rendered by Hon'ble Supreme Court in a matter arising out of a judgment in a suit after fulfilled trial. Therefore, if ***R.G.Anand*** case principle is applied, infringement if any / piracy has to be proved only by evidence and it should be established only by evidence

in a suit and at this stage, it will suffice if plaintiff makes out a prima facie case.

24 It is also to be noticed that second defendant argued that burden of proof is on plaintiff. Burden of proof no doubt is on plaintiff. However, while burden does not shift, onus swings like a pendulum from one end of lis to other. Therefore, it is only defendants 1 and 2 to exhibit the scene from suit movie and demonstrate that conclusions arrived at by third defendant are incorrect. In any event, it is well open to parties to take expert committee route which is one of the limbs of the prayer in the plaint itself as alluded to supra.

25 At this juncture, this Court refrains itself from expressing any opinion or view about whether it is a case of copyright or right simplicitor. In any event, this suit has been entertained as a suit under 'The Commercial Courts Act, 2015' ('said Act for brevity). This Court also noticed that pleadings are almost complete. Third defendant shall file written statement (if it still has time to do the same) within a week from today. Parties shall thereafter file affidavit of admission or denial of documents within a fortnight therefrom. Main suit will be listed for Case Management Hearing three weeks hence (02.04.2020) under

Order XV-A of amended 'Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by said Act. Therefore, if time schedule and time lines prescribed under said Act are followed, suit can be disposed of within six months from today. This court also notices that defendants 1 and 2 have not resorted to summary judgment route available to them under Order XIII-A of amended CPC as amended by said Act and therefore, elaborate arguments of the nature that have been advanced can be resorted to post oral evidence.

26 As theatrical release of suit movie has taken place on 20.12.2019, prayer in O.A.No.1149 of 2019 to that extent does not survive. Prayer in other two applications are acceded to with a caveat that interim orders shall operate for six months from today within which time trial in main suit shall be completed / heard out and carried to its logical end by resorting to time lines set out in said Act. This court is taking this view as it notices that contesting defendants, namely defendants 1 and 2 have filed written statements and completed pleadings. Third defendant and plaintiff are in the same boat. As pleadings are almost complete, parties can launch into trial even by seeking appointment of a dedicated Commissioner for recording evidence. Merely because second defendant

Producer has alienated satellite rights qua suit movie, prayers in instant applications in this regard cannot be construed to have become infructuous as exploitation of satellite rights has admittedly not happened. This court also deems it appropriate to record that second defendant was reluctant to file a copy of the alienation agreement citing some confidential commercial content. Therefore, this court is constrained to hold that alienee will remain bound by this order on being served with a copy of this order. To be noted, exploitation of satellite right will kick in only post theatrical release which in this case has happened pending suit.

27 **O.A.No.35 of 2020 and A.No.277 of 2020** are ordered acceding to the prayers or in other words, granting interim orders as prayed for for a period of six months from today by which time main suit shall be concluded in accordance with the calendar drawn up vide separate proceedings made in the main suit this day. It is open to plaintiff to approach this court for extension of interim orders if the suit is not decided by that time, but such extension plea will depend upon plaintiff being able to demonstrate that delay in disposal of suit within six months is not owing to plaintiff. Though obvious, it is made clear that main suit

shall be decided without being influenced by any observations made in instant order. **O.A.No.1149 of 2019** is closed insofar as theatrical release of suit movie is concerned as the same has happened on 20.12.2019 pending suit. There shall be no order as to costs.

28 The alienee private TV channel will remain bound by this order. Plaintiff shall communicate a copy of this order to the alienee private TV channel under cover of a suitable letter by Registered Post with acknowledgement due and file proof of service in Court.

10.03.2020

Index : Yes/No

Speaking order

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Note to Registry : Registry to communicate this order to Sun TV Network Limited, Mursoli Maran Towers, 73, MRC Nagar Main Road, MRC Nagar, Chennai-600 028, forthwith.

*O.A.Nos.1149 of 2019 and 35 of 2020 and A.No.277 of 2020
in C.S.No.724 of 2019*

M.SUNDAR, J.

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order in
O.A.Nos.1149 of 2019 and 35 of 2020
and
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C.S.No.724 of 2019

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