



O.A.Nos.285, 286 of 2022

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in C.S.(Comm.Div.) Nos.94, 95 of 2022

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SENTHILKUMAR RAMAMOORTHY, J.

A common plaintiff presented two suits against the same defendants. In C.S.(Comm.Div.)No.94 of 2022, the plaintiff seeks a permanent injunction to restrain the defendants from preventing the plaintiff from telecasting / broadcasting the cinematographic film VEERAPANDIYA KATTABOMMAN and in C.S.(Comm.Div.)No.95 of 2022, the same relief is prayed for as regards the cinematographic film ALIBABAVUM 40 THIRUDARGALUM. In each suit, the plaintiff has presented an application for interim relief. The said applications are dealt with and disposed of by this common order.

2. The case of the plaintiff is that the movies VEERAPANDIYA KATTABOMMAN and ALIBABAVUM 40 THIRUDARGALUM were admittedly released in the years 1959 and 1956, respectively. Therefore, as per Section 26 of the Copyright Act, 1957 (the Copyright Act), the copyright subsisted only for a period of 60 years from the beginning of the next calendar year. In effect, the period of 60 years would run from 01.01.1960 and 01.01.1956, respectively. Thus, the plaintiff asserts that the copyright expired on 31.12.2019 and 31.12.2016, respectively, as regards the two movies.



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3. Upon expiry of the copyright, the applicant took steps to televise the movie on 06.05.2022 and 02.05.2022, respectively. At that juncture, the e-mail of 06.05.2022 and 02.05.2022, respectively, was received from the legal department of the first respondent alleging that the telecast of the respective movie by the plaintiff would constitute infringement. The suit and interim application were filed in the said facts and circumstances.

4. The respondents/defendants oppose the application on several grounds, including the preliminary objection that the suit does not qualify as a suit or proceeding under Section 62 of the Copyright Act. As a result, it is contended that the plaintiff is not entitled to the benefit of the first proviso to Section 7 of the Commercial Courts Act, 2015 (the Commercial Courts Act). Consequently, it is stated that the suit cannot be instituted or prosecuted before the Commercial Division unless it meets the threshold of the specified value under the Commercial Courts Act. By drawing reference to paragraph 17 of the respective plaint, it is stated that the plaintiff valued the suit at Rs.2000/-, which is much below the specified value of Rs.3,00,000/-. Therefore, the respondents contend that the suit is not maintainable before the Commercial Division.

5. In order to substantiate this contention, learned counsel for the



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respondents states that only suits for infringement of copyright in any work or for the infringement of any other right conferred by the Copyright Act may be instituted under Section 62 thereof. According to learned counsel, neither suit is a suit for infringement of copyright because the plaintiff is admittedly not the owner of the copyright. Likewise, it is contended that neither suit is in respect of the infringement of any other right conferred by the Copyright Act. In support of these contentions, learned counsel relies upon the judgment of the Delhi High Court in *Vishal Pipes Limited v. Bhavya Pipe Industry* 2022 SCC OnLine Del 1730, and, in particular, paragraphs 60 to 64 thereof.

6. On the merits of the disputes, learned counsel submits that the expiry of the copyright does not denude the erstwhile copyright owner of all property rights. In particular, learned counsel contends that the first defendant continues to be the proprietor of the prints, DVDs, digital files, pen drives and any other storage device or equipment or medium in which the movie is stored or recorded or made accessible. Consequently, it is contended that the plaintiff is not entitled to misappropriate the same without permission from the first defendant.

7. On the contrary, learned counsel for the applicant/plaintiff relies



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upon two judgments of this Court to contend that these suits are maintainable

before the Commercial Division. Learned counsel refers to the judgment in

Chennai Ananda Bhavan v. Adyar Ananda Bhavan Sweets & Snacks

MANU/TN/9053/2019, wherein this Court examined the implications of the first

proviso to Section 7 of the Commercial Courts Act. By referring to paragraphs

11 to 17 of the said judgment, learned counsel contends that the Commercial

Division is entitled to hear all suits and applications relating to intellectual

property rights, irrespective of specified value, as per Section 2(1)(c)(xvii) of the

Commercial Courts Act by virtue of the first proviso to Section 7 thereof. By

relying upon the judgment in *Mohan C.Lazarus and others v. The Bible*

Society of India, judgment dated 18.10.2019 in C.S.No.603 of 2014, learned

counsel submits that, in that judgment, a suit under Section 60 of the Copyright

Act was allowed on the ground that the term of copyright had expired and

therefore the threat of infringement of copyright was baseless. Similarly, it is

stated that since the term of copyright in the respective movie expired on

31.12.2019 and 31.12.2016, the e-mail of the first defendant constitutes a threat

and amounts to infringement of the plaintiff's right to telecast the respective

movie.

8. Upon taking note of the rival contentions, at the outset, it should be



stated that this is an interlocutory application and no definitive conclusions are being recorded. The preliminary objection of the respondents/defendants is dealt with first. The defendants contended that the suit does not qualify as a suit under Section 62 of the Copyright Act. In order to decide this issue for interlocutory purposes, it is necessary to set out Section 62 below:

"62. Jurisdiction of Court over matters arising under this Chapter:-

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the District Court having jurisdiction.

(2) For the purpose of sub-section (1), a "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain."

9. Section 62(1) consist of two limbs, the first limb relates to suits or



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civil proceedings arising under Chapter XII and relating to infringement of

copyright in any work. The present action certainly does not qualify as an

action for infringement of copyright in any work. Turning to the second limb, it

relates to the infringement of any other right conferred by the Copyright Act.

The plaintiff relies on Section 26 of the Copyright Act and contends that the

said section prescribes the term of a copyright. Immediately upon the expiry of

the term prescribed, it is contended that a right is conferred on any person to

copy the work. This contention is refuted by the defendants on the ground that

Section 26 only confers a right on the copyright holder and not on persons such

as the plaintiff. While there is no doubt that Section 26 does not directly confer

rights on persons such as the plaintiff; for interlocutory purposes, there is an

arguable case to contend that, upon expiry of the copyright, a derivative right is

conferred on all persons, other than the copyright holder, to copy the work that

was previously subject to copyright. In this regard, another issue should be

noticed. Under Section 60 of the Copyright Act, any person, other than the

owner of the copyright, is entitled to institute proceedings on the ground of a

baseless threat of legal proceedings, and seek remedies in respect thereof. The

present action is akin to an action under Section 60 and learned counsel for the

plaintiff contends that declaratory relief is unnecessary under Section 60 in view

of the statutory declaration under Section 26. The right conferred under Section



60 is a statutory right under the Copyright Act and because the suit and application are directed against a threat of infringement, I concur with the plaintiff that they are maintainable.

10. The next issue that arises is whether the respective suit is maintainable before the Commercial Division in spite of the specified value being below the threshold of Rs.3,00,000/-. In view of the above conclusion that the suit qualifies as an action in respect of rights conferred by or flowing from the Copyright Act, the plaintiff is entitled to rely upon the first proviso to Section 7. Section 7 reads, in relevant part, as under:

"7. Jurisdiction of Commercial Divisions of High Courts:

All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

PROVIDED that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a Court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:



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PROVIDED FURTHER that all suits and applications transferred to the High Court by virtue of sub-section (4) of Section 22 of the Designs Act, 2000 (16 of 2000) or Section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction."

11. By omitting the words “of a Specified Value”, the proviso to Section 7 clearly carves out an exception to the prescription in the enacting clause by which the specified value threshold is required to be satisfied. This aspect was dealt with extensively in *Chennai Ananda Bhavan* and I concur with the conclusion therein. Therefore, the Commercial Division of this Court is vested with jurisdiction provided it is a matter falling within the scope of Section 62 or otherwise within the scope of Chapter XII of the Copyright Act.

12. Since the preliminary objection was overruled, the merits of the respective application warrant consideration. The admitted position is that the term of copyright in the movies expired on or about 31.12.2019 and 31.12.2016, respectively. Learned counsel for the defendants contends that the expiry of copyright does not *ipso facto* divest the owner of the copyright of all proprietary rights. The said contention is liable to be accepted to the extent that



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the erstwhile owner of the copyright, which is intangible intellectual property, continues to be the owner of physical property in the form of prints, DVDs, pen-drives, digital files, other physical storage devices, etc. in which the relevant movie is stored or recorded. Consequently, the defendants would be in a position to initiate action to prevent misappropriation or theft of such physical assets. However, the plaintiff cannot be prevented from making a copy of or telecasting the movie upon expiry of the term of copyright, provided the plaintiff does not misappropriate the physical property of the defendants for such purpose.

13. For reasons set out above, these applications are disposed of by restraining the defendants from preventing the telecast or broadcast of the movies VEERAPANDIA KATTABOMMAN and ALIBABAVUM 40 THIRUDARGALUM provided such telecast or broadcast is undertaken without misappropriating the physical property of the defendants in the prints or digital files or storage devices on which the movie is stored or recorded.

18.08.2022

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