

(2010) 04 BOM CK 0145

In the Bombay High Court

Case No : Notice of Motion No. 578 of 2006 in Suit No. 534 of 2006

Balaji Telefilms Ltd.

APPELLANT

Vs

Aftab Pictures Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Copyright Act, 1957 — Section 51

Citation : (2010) 43 PTC 734

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Rahul Chitnis and Jyoti Ghag, instructed by Thakore Jariwala and Associates, for the Appellant; A.K. Prajapati, for Defendant Nos. 1, 2 and 7, for the Respondent

Judgement

A.P. Bhangale, J.—Heard. The learned Counsel for the plaintiffs, who argued in support of the notice of motion, contended that the plaintiffs are the buyers of all the copyright in respect of the original Tamil film Thullatha Manaum Thullum. The motion is also supported by various affidavits submitted on behalf of the plaintiffs in order to prima facie establish that the plaintiffs are entitled to the copyright in respect of the said Tamil film so as to produce a Hindi film based upon the same script as that of the original Tamil film. It is the grievance of the plaintiffs that the defendants infringed upon the legal rights of the plaintiffs to produce a Hindi film based upon the original Tamil film Thullatha Manaum Thullum, and produced the Hindi film Sun Zarra in order to deprive the plaintiffs of their valuable legal right, title and interest of which they are lawful owners under a contract which has been entered into validly with the owners of the copyright of the said original Tamil film. In support of the motion, script in English in respect of the original Tamil film is annexed along with the affidavits as also the copy of the Agreement under which the plaintiffs have become the lawful buyers in respect of the copyright. The plaintiffs have also annexed the copy of the script of the film Sun Zarra in order to prima facie show that the defendants are liable for infringement of the copyright.

2. Learned Counsel for the plaintiffs invited my attention to the provisions regarding infringement of copyright in the Copyright Act, 1957 (herein after referred to as the Act) to urge that since the plaintiffs are the exclusive lawful owners in respect of copyright of the said original Tamil film, nobody else, except with expressed authority from the plaintiffs, was entitled to reproduce or copy the script from the said Tamil film. u/s 51 of the Act, there is a provision indicating statutory fiction denotes various circumstances where copyright is said to have been infringed. Prima facie the plaintiffs had succeeded in establishing infringement of their copyright by or on behalf of the defendants. The plaintiffs, therefore, were granted relief of ad-interim injunction during the pendency of the suit. The defendants had challenged the order granting the ad-interim relief but were not successful.

3. Be that as it may, considering the affidavits on the record as also the annexures to the plaint and the provisions of the Act and since a prima facie case of infringement of the plaintiffs copyright had been made out, with the view to enable the learned Counsel for defendant Nos. 1, 2 and 7 to seek instructions as to whether the defendants are ready and willing to furnish minimum monetary security in the sum of Rs. 21 lakhs in favour of the plaintiffs in the event the plaintiffs ultimately succeed at the final hearing in the suit. Therefore, the motion was adjourned yesterday to today.

4. Today, the learned Counsel for the said defendants stated that the defendants are not ready and willing to furnish any monetary security but, however, they are ready and willing to sell the film Sun Zarra to the plaintiffs for a sum of Rs. 21 lakhs, if the plaintiffs so desire. Learned Counsel for the plaintiffs opposed this submission of the defendants stating that prima facie violation of legal right is shown with reference to the provisions of the Act and since the plaintiffs were the exclusive owners of the copyright in respect of the Tamil film Thullatha Manaum Thullum, neither the defendants nor anybody else on their behalf were entitled to copy the said Thullatha Manaum Thullum original film in any manner so as to infringe the valuable legal rights of the plaintiffs.

5. The submission made on behalf of the defendants that they are ready and willing to sell the right in the film Sun Zarra for a sum of Rs. 21 lakhs, is based on the assumption that the defendants may be allowed to sell the film to the plaintiffs. Such an assumption/presumption has no basis in law and such proposal need not be accepted.

6. In my opinion, the balance of convenience definitely appears tilted in favour of the plaintiffs to prevent the defendants or anybody else on their behalf from further release of the film prints of Sun Zarra and to obtain any benefits thereunder pending the hearing and final disposal of the suit. Since the plaintiffs are the owners of the copyright, as is prima facie established by them, they are entitled to legal right as legal owners in respect of the script and property in the Tamil film Thullatha Manaum Thullum to protect their rights available according to law. If the injunction as prayed for is not granted during the pendency of the

suit, the plaintiffs will suffer irreparable loss which may not be compensated in terms of money as the violations of tangible as well as intangible rights are involved in the controversy.

7. For all the above reasons, the notice of motion is made absolute in terms of prayer Clause (a). It is made clear that the observations made herein are for the purpose of deciding this motion at the interim stage of the suit and the parties shall be at liberty to adduce evidence on merits and all contentions are left open, to be decided at the final hearing of the suit. The notice of motion accordingly stands disposed of.