
(2010) 02 MAD CK 0255

In the Madras High Court

Case No : O.S.A. No's. 38 to 41 of 2010 and M.P. No's. 1 and 2 of 2010 in OSA 38 of 2010 and MP No's. 1, 1 and 1 of 2010 in OSA 39 to 41 of 2010

K.S. Gita

APPELLANT

Vs

Vision Time India Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5
Copyright Act, 1957 — Section 19(4)

Citation : (2010) 3 MLJ 451 : (2011) 45 PTC 393

Hon'ble Judges : T. Raja, J;M. Chockalingam, J

Bench : Division Bench

Advocate : A.A. Mohan, for the Appellant; R. Krishnaswamy for K. Harishankar for R1, T. Kokilavani, for RR2 and 3, C. Ramesh, for R4 and K.V. Babu, for R5, for the Respondent

Judgement

M. Chockalingam, J.—All these four intracourt appeals have arisen from a common order made in O.A. Nos. 786 and 787 of 2009 and Application No. 3691 of 2009 and another order made in O.A. No. 70 of 2010 in C.S. No. 701 of 2009.

2. For convenience sake, the parties are hereinafter referred to according to their litigative status and ranking in the suit.

3. The plaintiff has sought the following reliefs:

(i) Permanent injunction restraining the defendants by themselves, their partners/ proprietor, heirs, representatives, successors in business, assigns, distributors, agents or any one claiming through them from in any manner infringing the plaintiff's copyright in the literary work "THANGAM/BANGARAM/GANGA" by adaptation/translation/substantial reproduction, making any cinematograph film, sound recording, producing TV serial, of such literary work "THANGAM/BANGARAM/GANGA" or any other teleserial/ cinematograph film/ sound recording amounting to infringement of copyright of the plaintiff's literary work "THANGAM/BANGARAM/GANGA" or in any other manner whatsoever.

(ii) Permanent injunction restraining the defendants by themselves, their partners/ proprietor, heirs, representatives, successors in business, assigns, distributors, agents or any one claiming through them from in any manner broadcasting, telecasting, distributing, marketing or dealing directly or indirectly with the teleserial titled "THANGAM" in Tamil language or in any other language with any other title using the plaintiff's story, literary work "THANGAM/BANGARAM/GANGA" or by making any adaptation or falsely claiming authorship thereof or in any manner whatsoever.

(iii) The defendants be directed to pay a sum of Rs. 10,00,000/- per episode from 30th June 2009 towards royalty to the plaintiff for exploiting their copyright in the story, literary work "THANGAM/BANGARAM/GANGA" in Tamil language in the defendants teleserial "THANGAM" or any other teleserial by means of adaptation/ translation/ substantial reproduction/making of cinematograph film, sound recording thereof.

(iv) The defendants be ordered to pay to the plaintiffs a sum of Rs. 10,05,000/- as liquidated damages for committing infringement of copyright in the plaintiff's literary work.

(v) A preliminary decree be passed in favour of the plaintiff directing the defendant to render account of profits made on account of telecast of the Tamil language daily soap TV serial "THANGAM" and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts.

4. Pending the suit, O.A. No. 786 and 787 of 2009 were made for temporary injunction, the former to restrain the respondents from telecasting the serial titled "Thangam" in Tamil language or any other language while the latter to restrain the respondents from in any manner infringing the plaintiff's copyright in the said literary work Thangam/Bangaram/Ganga, while A. No. 3691/2009 was for a direction to the respondents to pay a sum of Rs. 10 lakhs per episode from 30.6.2009 onwards towards royalty. Apart from the above three applications, the plaintiff has also filed O.A. No. 70 of 2010 seeking temporary injunction to restrain the respondents 1 to 4 from adapting, remaking, translating, dubbing or substantially reproducing or making any cinematograph film or producing TV Serials of the story Thangam/Bangaram/Ganga in any other language including Kannada.

5. In all the above applications, the respondents 1 to 4 filed their counter affidavits.

6. A common order came to be passed in the first three applications whereby all those applications were dismissed. While dismissing the applications, the learned Single Judge made the following order:

The defendants 1 to 4 are directed to inform this Court well in advance, in the event of they intending to telecast the mega serial "Thangam" in some other

language(s) either by dubbing it or by shooting it afresh; so that the plaintiff would have the right to apply to this Court seeking appropriate reliefs. The defendants 1 to 4 shall maintain accounts of the said T.V. Serial Thangam and furnish it to court whenever it is ordered to be produced before court.

7. Equally O.A. No. 70 of 2010 also met an order of dismissal. While doing so, the learned Single Judge has made the following order:

16. In view of the above, this application is also disposed of only on the same lines as O.A. Nos. 786 and 787 of 2009, but with a small modification. The respondents 1 to 4 are directed to maintain accounts of the TV serial not only in Kannada language, but also when produced in any other language, so that the applicant is not compelled to file any more application seeking similar reliefs. The respondents 1 to 4 are directed to file within two weeks the statement of accounts relating to the Tamil serial. Similarly the respondents 1 to 4 shall file statement of accounts once in six months in respect of the serials produced in other language on the basis of the same storyline.

8. Under the stated circumstances, aggrieved over the above orders, the plaintiff has brought forth all the above four appeals.

9. Advancing arguments on behalf of the appellant, the learned Counsel would submit that the appellant is the owner of the copyright in the literary work Thangam/ Bangaram/Ganga; that this was not considered by the learned Single Judge; that a perusal of the documents produced by the appellant would reveal that she is the rightful owner and proprietor of the copyright in the said literary work; that it is pertinent to note that the fifth respondent has obtained registration with the TV Producer's Council for the same; that following the same, the fifth respondent has executed a deed of assignment dated 26.6.2008, assigning her ownership of the copyright in the said literary work in favour of the appellant; that the same would go to show that the prima facie case is in favour of the appellant; that it is also pertinent to point out that the fifth respondent also registered her literary work with South Indian Film Writer's Association on 10.6.2009; that the teleserial Thangam produced and telecast by the respondents is nothing but a substantial reproduction of the underlying work as narrated in the appellant's literary work; that the respondents 1 to 4 failed to establish that the 4th respondent is originator and author of the story in dispute; that in these type of cases, the general nature of the television and film industry has got to be taken into account, wherein the production involves three stages namely development, production and distribution, and each stage raises different copyright issues; that admittedly, the respondents 1 to 4 have not acquired any rights from the author or the appellant to adapt and develop their literary work in the form of television serial; that in view of the same, the learned Single Judge should not have dismissed the applications, but not done so, and hence the orders of the learned Single Judge have got to be set aside.

10. The learned Senior Counsel appearing for the first respondent and the

learned Counsel for the other respondents while sustaining the order under challenge, put forth their contentions which were raised before the learned Single Judge.

11. As could be seen from the averments made by the respective parties and submissions made by the learned Counsel on either side, the entire case rests upon the copyright in respect of a script with the caption "Thangam". The case of the plaintiff is that the said script comprising of 30 paragraphs is a brainchild of the fifth defendant (D5) with the desire to make it a mega serial; that D5 had discussion with the second defendant (D2) and also gave a copy of the script; but, D5 later found that D2 could not help her to convert the same into a mega serial; that thereafter D5 assigned the copyright in favour of the plaintiff by executing an assignment deed dated 26.6.2008; that on assignment, the plaintiff was taking steps to convert the same into a mega serial; that while the matter stood thus, the plaintiff came to know that D1 to D4 have made the mega serial illegally on the script of D5 and were also screening the TV serial; that number of episodes have also been screened and hence the circumstances would require for an interim injunction pending the suit; that by that process, the defendants 1 to 4 were illegally earning not less than Rs. 10 lakhs per episode, and hence they should be ordered to deposit the same. In all the above applications, the case of the defendants 1 to 4 was that the case of the plaintiff was false; that D4 was the author of the original script; that they have been telecasting the mega serial from 29.6.2009 onwards; that more than 110 episodes have already been screened; that apart from that, u/s 19(4) of the Copyright Act, the plaintiff could not at all maintain the suit since the right got extinguished statutorily; that the script Thangam found enclosed in pages 1 to 13 of the typed set of papers filed by the plaintiff did not even suggest the end of the story; that there was no prima facie case or balance of convenience available for the plaintiff to seek for an injunction; and that apart from that, since the plaintiff has sought for damages, a direction for furnishing security does not arise.

12. On consideration of the submissions and also the circumstances attendant, this Court is of the considered opinion that the appellant/plaintiff is not entitled for either temporary injunction or a direction to deposit the money towards royalty pending the suit. The controversy whether the script Thangam was authored originally by D5 as claimed by the assignee-plaintiff or by D4 could be decided only on appreciation of evidence on either side. Much reliance was placed by the learned Counsel for the appellant that the script was actually registered with the TV Producers' Council, Hyderabad; that a communication was also received by the plaintiff and the same was much earlier to the commencement of the mega serial in question. It is contended by the respondents' side that the TV Producers' Council was not functioning for a longtime, and the letter received on 20.8.2009, from the Secretary of the TV Producers' Council would indicate that the scripts were not registered with them. Now, at this juncture, the contention of either of the side as to the registration as contended by the plaintiff or that the same could not have been registered as

contended by the defendants 1 to 4, could be considered and appreciated only on sufficient evidence being produced. The other documents relied on by the appellant were only communications, and they could not be appreciated at this juncture to take a decision on the controversy as to the authorship of the script.

13. A decision of the Apex Court reported in R.G. Anand Vs. Delux Films and Others, . was relied on by the appellant. It was held in that decision by the Apex Court as follows:

46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. ...

2. ...

3. ...

4. ...

5. ...

6. ...

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

14. From the very reading of the above decision, it would be quite clear that the violation of the copyright might be taken as proved if after seeing the serial, the viewer gets a totality of impression that the serial was by and large a copy of the original script. Hence it would not be possible to make a comparison or find out whether there are any similarities, or whether the mega serial now being screened by the respondents 1 to 4 has emanated from the said script of D5 as alleged by her. It is admitted even by the plaintiff that the mega serial has crossed more than 100 episodes for the past one year. If it is restrained from being screened at this stage, neither of the parties can have the benefit out of the same, and the balance of convenience, under the stated circumstances, will not be in restraining the mega serial.

15. The learned Counsel for the appellant was pressing that if not injunction is granted, the entire copyright of the plaintiff would be jeopardized. But, this contention cannot be countenanced in law. Among the reliefs, the plaintiff has

also sought for damages. Under the stated circumstances, the decision rendered by a Division Bench of this Court and reported in R.M. Subbiah and Another Vs. N. Sankaran Nair and Another, would squarely apply to the present facts of the case. In that decision it has been held thus:

6. This is a case where literary piracy is pleaded. Injunction being an equitable remedy, which is granted by a court in exercise of its judicial discretion, has to be considered from various facets which arise from a particular set of circumstances in each case. There may be cases in which the grant of an injunction temporary or permanent will only meet the ends of justice and an alternative safeguard for the preservation of the rights of the challenging party cannot at all be thought of. There may be also cases where the remedy of injunction has to be made flexible and adjustable to the situations arising in each case. A rigid invocation without contemplating elasticity in the application of the rule as to the grant of injunction might sometimes result in hardship, which cannot be later cured.

16. Insofar as a direction to the defendants 1 to 4 to deposit Rs. 10 lakhs every month by way of royalty, it was in the nature of directing the defendants 1 to 4 to furnish security. The learned Single Judge has followed a decision of the Apex Court reported in 2008 3 LW 744 Raman Tech and Process Engg. Co. and Anr. v. Solanki Traders to deny the relief. The said decision runs as follows:

5. The power under Order 38 Rule 5 CPC is drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilize the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out of court settlement, under threat of attachment.

6. A defendant is not barred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bona fide and valid and also satisfy the Court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order 38 Rule 5 C.P.C. Courts should also keep in view the principles relating to grant of attachment before judgment (see - Premraj Mundra Vs. Md. Maneck Gazi and Others, , for a clear summary of the principles.)

17. In view of the aforesaid circumstances, it is not a fit case where the Court could exercise its extraordinary power mechanically. In the instant case, the plaintiff has to make out a case that she was entitled for damages. Hence it is

not a fit or proper case to issue a direction as asked for by the plaintiff. While denying the relief, the learned Single Judge has directed the defendants 1 to 4 to maintain accounts of the said TV serial and also inform to the Court well in advance when they were intending to telecast in some other language so that the plaintiff would be enabled to apply to the Court seeking appropriate reliefs. This Court is unable to notice anything to interfere in the said order.

18. Equally insofar as the order in O.A. No. 70 of 2010 on the very same factual matrix, the learned Single Judge has directed the respondents 1 to 4 to maintain accounts of the TV Serial not only in Kannada language but also when produced in any other language so that the applicant is not compelled to file any more applications seeking similar reliefs and also directed the respondents 1 to 4 to file statement of accounts within two weeks in respect of the Tamil serial and once in six months the statement of accounts in respect of the serials produced in any other language on the basis of the said script. The order made in O.A. No. 70 of 2010 was with some minor modifications from the earlier order. In the considered opinion of this Court, the plaintiff is not entitled for injunction as asked for in any one of the applications and also the directions to the respondents 1 to 4 to deposit Rs. 10 lakhs by way of royalty every month. It would suffice, under the stated circumstances, to issue a direction to them to maintain accounts of the TV mega serial Thangam in Tamil which is being screened till the serial is over and file the statement of accounts in respect of the episodes already screened within a period of two weeks herefrom and also in respect of the serials produced in any other language on the basis of the same script, to maintain and file statement of accounts when they are called upon to produce till a decision is taken in the suit on trial.

19. Accordingly, a direction is issued, and these original side appeals are dismissed leaving the parties to bear their own costs. Consequently, connected MPs are also dismissed. The defendants are directed to file their written statements within a period of two weeks herefrom.