
(1951) 06 CAL CK 0004
In the Calcutta High Court
Case No : Suit No. 2207 of 1951

Sailendra Nath De

APPELLANT

Vs

Chayanika Chitra Mandir and Others

RESPONDENT

Date of Decision : 15-06-1951

Acts Referred:

Copyright Act, 1957 — Section 1(2)(a), 4

Citation : 55 CWN 713

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : J.C. Moitra, for the Appellant; Bimal C. Mitter, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This is an application for the appointment of a receiver of the proceeds of the picture "Jighansa", from the Cinema Houses mentioned in the petition, alternatively for an injunction restraining the defendants, their servants and agents, from realizing, withdrawing or receiving any money in respect of the said film, and for an order directing the defendants to keep a separate account in respect of all receipts and disbursements in respect of the said film, and for other reliefs.

2. The facts are briefly as follows. There was a well-known writer of detective novels in the Bengali language, of the name of Panchkari De. Among the many Books that he wrote, there is one called "Mrityu Bivisika". This book relates to the mystery surrounding the deaths of several persons, and a Gigantic Hound with a luminous face which was connected with such details. Those who have read the book, "Hound of the Baskervilles" by Sir Arthur Conan Doyle, will readily recognise the story. In fact, the book is almost a verbatim translation of that famous book. The names of course have been changed and the venue shifted to a place in India, but otherwise the two books are the same, theme by theme, incident by incident, and as I said, almost word by word. The author did not acknowledge that it was a translation, took no permission for that purpose, and

even in the plaint and petition in this suit nothing has been mentioned to that effect. It is the defendants who have raised that point. I have myself compared the two books and find that the comment is more than justified. Even the half-tone pictures in the original edition of Sir Arthur Conan Doyle's famous book, have been faithfully copied.

3. Panchkari De died in 1945, and the plaintiff is his son. He claims to have a copyright in the books of his father including the book "Mrityu Bivisika". His grievance is that the defendants have produced and are exhibiting a cinema film called "Jighansa" which infringes his copyright, publishing right and performing right in the said book "Mrityu Bivisika". The first two defendants are the producers, the third defendant the distributor and the fourth defendant is the camera man and one of the directors of the film. According to the plaintiff, the plot episode, incident, situations, dialogue and characters in the Bengali book "Mrityu Bivisika", and the cinema film "Jighansa" are the same. The defendants naturally dispute this. According to the defendants, the script and scenario of the film "Jighansa" were written by a group of writers and technicians and they did not in any way borrow either the plot, or the characters, or the dialogue of the book "Mrityu Bivisika". Although they have not said so in so many words in their pleadings, there exists no doubt and it was admitted by learned counsel at the hearing of the application that the film itself is based on the story of the book "Hound of the Baskervilles" written by Sir Arthur Conan Doyle. In "Mrityu Bivisika", the story is of course the same as in the "Hound of the Baskervilles". Instead of Sherlock Holmes, we have detective Govindram. The mysterious black hound is there, and of course the mystery is ultimately unraveled by the astute detective. The plot of "Jighansa" follows the same idea, but the characters have been somewhat altered. Instead of the Gigantic Hound we have a Giant-statured escaped-convict. In the opening chapters of the English book as well as "Mrityu Bivisika", a girl is killed (together with her pursuer) by a Gigantic Hound, somewhere in the middle of the moors. In the film, the girl jumps out of the window and thus commits suicide. If you compare character by character there are some differences to be observed between the characters as portrayed in the film and the characters as portrayed in the books. It is also alleged that the dialogues in the books and the film are the same. I have compared the dialogue in the book "Mrityu Bivisika" and the script of the film, but I cannot say that reading the two anyone can say that the one is taken from the other. At the hearing of the application, the script was produced and the plaintiff had every opportunity of scrutinizing the same, but no portion could be shown to me which would justify the conclusion that the film had copied the dialogue of the Bengali book.

4. The nett result is this. Both the plaintiff's father and the defendants have borrowed the plot of "Hound of the Baskervilles" written by Sir Arthur Conan Doyle. The Bengali book is a virtual translation of the original, but made without permission and never acknowledged. There is no originality displayed in the translation, or the arrangement of the subject-matter, nor is there any

importation of any new idea. No special labour or skill has been expended in presenting it to the public. The book can scarcely be called an adaptation, since there is no deviation from the original plot, or any abridgment of the story, or any departure from the recorded dialogue. What then is the position in law?

5. u/s 1(2) (a) of the Copyright Act, the author of an original work has the sole right to produce, reproduce, perform or publish any translation of the work. Any unauthorized translation is an infringement of the copyright of the author. The only way in which the law differs in India is to be found in Section 4 of the Indian Copyright Act. Under the Indian Act copyright in works first published in British India (now the State \), to produce, reproduce or publish a translation, subsists only for a period of ten years, unless the author himself or someone with his permission, publishes a translation in this country. Mr. Moitra appearing for the petitioner strongly relies on this section, but I cannot see how this section applies to the facts of this case or helps his client. To start with, one cannot call his client's book an authorised translation. Besides, when it was first published, the period of ten years had not expired nor is the "Hound of the Baskervilles", a book first published in British India. The Bengali book can therefore be called by a much less dignified name. But according to Mr. Moitra, even a piracy is entitled to protection. Mr. Copinger in his celebrated book on the law of Copyright says as follows: -

It is submitted that copyright can be claimed in a work which is a piracy of another copyright work, provided that the piracy is not a mere slavish copy or, possibly obtained by fraud. Lord Eldon in refusing an injunction to restrain the infringement of a copyright in a Road Book appears to have been influenced by the fact that the plaintiff's work was the infringement of a copyright in an earlier work, but it is difficult to see why, in principle this should affect the right to copyright, so long as the infringer has done independent work. Take for example the case of a person who translates a copyright work into another language. Why on principle should any one be at liberty to appropriate the translator's independent labour because his translation was not authorised by the author of the original work who does not see fit to prevent the publication of the translation? Moreover the unauthorized translation of today may become an authorised translation tomorrow." From this standpoint of view, there might have been a great deal to say if it could be proved that there was any necessary link between the work of Panchkari De and the impugned film. If it could be proved beyond doubt that the makers of the film had utilised the translation of the author, or its dialogue, or its arrangement of the subject matter, then there would be ground for saying that there was an infringement. But I can find no such ground at all. The original idea of the story is that of Sir Arthur Conan Doyle. Both Panchkari De and the producers of the film have based their stories upon that Panchkari De has adapted the original idea and the original language to such an extent that his work is more or less like a translation. The producers of the film "Jighansa" have altered the plot somewhat, and their dialogue is not a mere translation. There is nothing to show that the producers of the film took

anything from the Bengali book, or that they even knew of its existence when they produced the work. As Lord Atkinson points out in *Macmillan Co. Ltd. v. Cooper* (40 TLR 186), the moral basis upon which the protective provisions of the Copyright Act of 1911 rests, is the Eighth Commandment - "Thou shalt not steal". That both Panchkari De and the producers of "Jighansa" have stolen from the book of Sir Arthur Conan Doyle is quite evident, but it is by no means evident that they have stolen from one another.

6. In this connection the case of *Gopal Das Vs. Jagannath Prasad and Another* is instructive. In that case, the plaintiff wrote a book called the "Sachitra Bera Kok Shastra". The defendant published a book called the "Asli Sachitra Kok Shastra". That the plaintiff had himself recourse to original Sanskrit sources was admitted. It was however abundantly proved that the defendant had not taken the trouble to do so, but utilised the labour of the plaintiff, even making the same mistakes that the plaintiff committed! It was held that there was a clear infringement of copyright. The principle has thus been laid down in *Jarrold v. Houston* [(1857) 3 K&J 708]: -

I take the illegitimate use, as opposed to the legitimate use of another man's work on subject matter of this description to be this; if knowing that a person whose work is protected by copyright has with considerable labour compiled from various sources a work in itself not original but which he has digested and arranged, you being minded to compile a work of like description, instead of taking the pains of searching into all the common sources and obtaining your subject matter from them avail yourself of the labour of your predecessor, adopt his arrangements, adopt moreover the very questions he has asked, or adopted them with a very slight degree of colourable variation and thus save yourself pains and labour by availing yourself of the pains and labour which he has employed, that I take to be an illegitimate use.

7. In this case, I am not satisfied on the materials before me that the defendants have availed themselves in any way of the pain and labour employed by Panchkari De. In fact, I am not satisfied that there is any necessary link between the film and the work of the author at all. Mr. Moitra in his argument went very much further and propounded a proposition of law which I am unable to accept. He says that Panchkari De might have pirated the original idea from Sir Arthur Conan Doyle or translated his book without permission but once he had done so, nobody in India could again reproduce the idea, at least not in the Bengali language.

8. To take an analogy I translate Shakespeare's "Romeo Juliet" into the Bengali language; thereafter, no one can film a picture where a young man attends a nightly tryst with his ladylove! This, to my mind, is a startling proposition of law.

9. One can never have a copyright in ideas, and when your own idea is not even an original one, how can you stop people copying the same idea?

10. Mr. Mitter appearing on behalf of the defendants 2 and 3 has taken another

point which seems to be a substantial one. He points out that in the plaint the plaintiff has asked for an injunction, restraining the defendants from distributing, releasing, exhibiting or exploiting the film in any manner and has also asked for Rs.80,000 as damages. In this application, however, no injunction is asked for stopping the exhibition of the film, but a Receiver is asked of the proceeds of the film in certain Cinema Houses. The plaintiff has not claimed any relief in the plaint regarding these receipts, so that the Court cannot at this stage intercept the receipts. Regarded as a money claim, sufficient grounds have not been made out for the appointment of a Receiver. Regarded as a claim for an injunction to stop the infringement of an alleged copyright, the petitioner has not been able to make out a "prima facie" case before me to prove that he has any right to such an injunction. Therefore I cannot appoint a Receiver of the receipts from exhibitors, nor can I direct the defendants to keep a separate cannot. The distributors are a limited company and if the plaintiff succeeds I have no doubt that the accounts would be available. My findings herein are however not to prejudice the trial of the suit. In the premises, the application fails and must be dismissed. Costs in the cause including reserved costs. I will however expedite the trial of the suit. Written statements within a fortnight, mutual discovery within a fortnight thereafter, inspection forthwith thereafter. Suit to come into the prospective list on the 26th July next with liberty to both parties to apply for an early hearing.