

(2013) 02 MAD CK 0072

In the Madras High Court

Case No : Application No. 5178 of 2012 in C.S. No. 93 of 2012

Thiagarajan

APPELLANT

Vs

Capital Film Works

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : AIR 2013 Mad 114 : (2013) 55 PTC 406

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Akbar Ali, J.—The present Petition is filed to reject the plaint in C.S. No. 93 of 2012 as per Order VII Rule 11(a) of the Civil

Procedure Code. Brief facts of the case to decide the issue on hand are narrated below:

The respondent claims that he is the Author of the script, stated to have been written in the year 2006, and he approached the

applicants/defendants to make a film based on the Script authored by him. Petitioners-1 and 2, being the Film Making Company and its CEO

respectively, agreed for production and cinematograph of the film ""Aarnaya Kaandam"". The respondent/plaintiff directed the film himself and he

was paid certain amount for the script and direction. The film was released on 10.6.2011. Though the movie did not draw substantial number of

viewers in the theatre, it won the grand Jury Award for the best film at South Asian International film festival at New York, United States. The

movie also won two National Awards for the year 2011 and for 2012.

2. While so, the applicants took steps to dub the movie in Telugu. Having coming

to know of such dubbing of the movie, the respondent claimed

Copy Right of the literary work and on that basis, filed the main Suit for permanent injunction to restrain them from translating the script ""Aaranya

Kaandam"" into any language making any new cinematograph that is based on the script ""Aaranya Kaandam"" incorporating any translated version

of the script ""Aaranya Kaandam"" as part of any new or existing cinematograph film or doing any other act inconsistent with the right of the plaintiff

under 14(a) of the Copyright Act, 1957 (for brevity, ""the Act"").

3. The applicants entered appearance and they have also filed a detailed written statement. Meanwhile, the respondent filed an application for

injunction and obtained an order of ad-interim-injunction on 29.2.2012 restraining the applicants from translating the script. The applicants filed an

application in O.A. No. 1888 of 2012 to vacate the order of interim injunction granted in O.A. No. 96 of 2012.

4. O.A. Nos. 96 and 1888 of 2012 were heard together and, on 5.6.2012, Application No. 1888 of 2012 was allowed vacating the injunction,

against which, OSA No. 202 of 2012 was preferred and a Division Bench of this court passed an elaborate order and thereby confirmed the

order of the learned Single Judge.

5. The respondent preferred SLP and the Hon"ble Apex Court has passed an order which reads as follows:

..Considering the fact that the Suit is still pending before the Madras High Court, we are inclined to dispose of the special leave petition, with a

request to the High Court to dispose of the Suit, uninfluenced by the observations made by the High Court, as expeditiously as possible preferably

within a period of three months from the date of receipt of this order.

The respondent would file written statement before the High Court within a period of two weeks from today, failing which appropriate orders can

be passed by the High Court.

We make it clear that we are not expressing any opinion on the various contentions raised before us. The question of law raised, however, is kept

open.

Needless to say, interim order passed by the High Court will have no effect while disposing of the matter.

The SLP is, accordingly, disposed of.

6. In the meanwhile, the applicants have come forward with the present application to reject the plaint in C.S. No. 93 of 2012 as per Order VII

Rule 11 of Civil Procedure Code.

7. According to the applicants, they being the first Copyright owners of the subject film, they have exclusive and absolute right to communicate the

subject film by way of dubbing the movie in any other language and the suit is vexatious for want of cause of action. The plaint does not disclose

any cause of action and the Hon"ble Division Bench has accepted the plea of the applicants that the producers of the film are entitled to "Dub" the

film to communicate the same. According to the applicants nothing survives in the suit after the observation of D.B. While vacating the order of

Interim Injunction.

8. The respondent has filed a detailed counter and the sum and substance of the counter allegations is that the finding of either the learned Single

Judge or the learned Division Bench in an interlocutory application will not affect the claim of the plaintiff and the cause of action for the suit has to

be looked into only on the basis of the plaint averments and nothing else.

9. It is contended by the learned counsel Mr. Vadivelu Deenadayalan, appearing for the applicants, that both the learned Single Judge as well the

Division Bench of this Court gave a concurrent finding that the respondent/plaintiff does not have a prima facie case for an order of an injunction

and the learned Division Bench arrived at a categorical finding that the dubbing of the cinematograph film from one language to another language

cannot be said to be translation but it is only a right of communication conferred on the producer in which no literary work is involved. According

to the learned counsel for the applicants, even otherwise, the respondent has not disclosed any cause of action. It is further submitted that, with

reference to Sec. 14(1)(d)(iii) of the Copy Right Act 1957 (hereinafter referred to as the "Act"), the Division Bench of this court has clearly

distinguished the right of the owner of the Cinematograph film as the one including the right to communicate the film to public. He pointed out that

there is absolutely no infirmity in dubbing the film inasmuch as the producer gets the wholesome right as the first owner of the Copy Right under

Sec. 17(b) of the Act. By drawing the attention of this Court to the various

provisions of the Act, and by stating that the suit itself is frivolous and that the plaint bereft of any cause of action, is to be straight away rejected, under Order VII Rule 11 CPC., learned counsel pleaded for dismissal of the suit in limini.

10. On the contrary, the learned counsel Mr. V. Niranjan, appearing for the respondent, by stating that the order of the learned Division Bench was considered by the Apex Court and when there is a specific observation by the Apex Court to the effect that the ""interim order passed by the High Court will have no effect while disposing of the matter"", the implied and underlying meaning behind that observation is that the Apex Court has directed the High Court to dispose of the matter i.e., the Suit, within a stipulated period and therefore, the present application is absolutely misconceived. The learned counsel added that, while considering an application under Order VII Rule 11 CPC, this court has to look into the facts of the case as elucidated in the plaint without being influenced by other material. He also relied on the following case laws:

- i) D. Ramachandran Vs. R.V. Janakiraman and Others,
- ii) Inspiration Clothes and U Vs. Colby International Limited
- iii) Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others,
- iv) Rameshwari Devi and Others Vs. Nirmala Devi and Others,
- v) Star India Private Limited Vs. Leo Burnett (India) Private Limited,
- vi) Norowzian vs. Arks (1998) FSR 394
- vii) Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association and Others,

11. I have given my thoughtful consideration to the materials available on record in the light of the rival submissions advanced on either side.

12. It is admitted that the applicants are the Production Company and the respondent has approached the applicants along with the script and narrated his Handwork and thereafter, they commenced production of the cinematograph film ""Aaranya Kaandam"". It is also admitted that the respondent was allowed to direct the film and he was recognised as the owner of the script. However, the applicants have become the owners of the cinematograph film ""Aaranya Kaandam"". It is also admitted that they have

taken steps to dub the cinematograph film in Telugu and release the same for public view.

13. The respondent has filed the suit claiming a Copy Right under Sec. 14(a) of the Act. Claiming such right, the respondent obtained an order of ad-interim injunction which was opposed by the petitioners who claimed the right of ownership under Sec. 14(1)(d)(iii) of the Act. The learned single Judge accepted the plea and vacated the ad-interim injunction, against which, O.S.A. No. 202 of 2000 was preferred.

14. The learned Division Bench dealt with the matter elaborately. After considering various provisions of the Act, the Division Bench held as follows:

14

A careful reading of the said provision shows that the copyright of the appellant over the script ""Aaranya Kaandam"" and the copyright of the first respondent over the cinematograph film ""Aaranya Kaandam"" are independent rights of the appellant as well as the first respondent respectively.

There is admittedly no restriction regarding the language in which the cinematograph film has to be released. On the facts, it is also admitted that the first respondent has not translated the literary work of the appellant, but has only dubbed the cinematograph film ""Aaranya Kaandam"" into Telugu language.

15. Even if the contention of the learned counsel for the appellant is accepted that u/s 14(1)(d) of the Act the right of the first respondent over the cinematograph film is restricted to the following terms:

Section 14 Meaning of copyright:

(1) For the purposes of this Act, ""Copyright"" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of

the following acts in respect of a work or any substantial part thereof, namely,-

(a) to (c) ****

(d) in the case of a cinematograph film,-

(i) to make a copy of the film, including a photograph of any image forming part thereof;

(ii) to sell or give on hire, or offer for sale or hire, and copy of the film, regardless or whether such copy has been sold or given on hire of earlier

occasions;

(iii) to communicate the film to the public.

a reading of Section 14(1)(d)(iii) of the Act shows that the right of the owner of the cinematograph film includes the right to communicate the film to

the public. If such right is available to the first respondent to communicate the film to the public, in the absence of any contract to the contrary that

such communication right of the first respondent is restricted only in respect of the Tamil original cinematograph film and his right of dubbing the

cinematograph film in any other language is prohibited, it is impossible to accept the contention of the learned counsel for the appellant as if the

respondents have no right to dub the cinematograph film. Moreover, dubbing is different from remaking of a cinematograph film. If the case of the

appellant is that the first respondent is remaking the Tamil cinematograph film ""Aaranya Kaandam"" in Telugu in a different form, it may be totally

different. But on the facts of the present case, the first respondent, being the producer of the cinematograph film ""Aaranya Kaandam"", has only

dubbed the Tamil cinematograph film into Telugu and, therefore, there is no question of violation of any copyright.

16. Aggrieved by such observations, which has almost decided the crux of the dispute, the respondent went to Supreme Court. The SLP preferred

by the respondent was disposed of by the Apex Court with the observations as stated above. Nevertheless, the applicants are before this court

pleading for rejection of the plaint mainly on the observation made by the Hon"ble Division Bench in denying an order of injunction to the

respondent.

17. Though the learned counsel for the applicants would also submit that there is no cause of action, the main contention is based on the

observation made by the Hon"ble Division Bench. Before considering such contentions, let us revisit the provisions of law.

Order VII Rule 11 reads as follows:

11. Rejection of Plaint: The Plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the Plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the

Court, fails to do so;

(c) where the relief claimed is properly valued, but the Plaint is returned upon paper insufficiently stamped, and the Plaintiff, on being required by

the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the Suit appears from the statement in the Plaint to be barred by any law;

(e) Where it is not filed in duplicate:

(f) where the Plaintiff fails to comply with the provision of Rule 9. Provided that the time fixed by the Court for the correction of the valuation or

supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the Plaintiff was

prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the

time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

18. It is well settled that only on the following grounds namely, (a) where the plaint does not disclose a cause of action; (b) the relief claimed is

undervalued and not corrected within the time allowed by the Court; (c) insufficiently stamped and not rectified within the time fixed by the Court;

(d) barred by any law; and (e) failed to enclose the required copies and the Plaintiff fail to comply with the provisions of Rule 9, the Court has no

other option except to reject the same.

19. It is also well settled that while considering an application under Order VII Rule 11 the court has to look into the averments in the Plaint and

the same can be exercised by the Trial Court at any stage of the Suit. It is also clear that the averments in the Written Statement are immaterial and

it is the duty of the Court to scrutinize the averments/pleas in the Plaint. In other words, what needs to be looked into in deciding such an

Application are the averments in the Plaint and nothing else. At that stage, the pleas taken by the Defendant in the Written Statement are wholly

irrelevant and the matter is to be decided only on the plaint averments.

20. In 2001 57 DRJ 16 (Inspiration Clothes v. Colby International Ltd., High Court of Delhi held as follows:

The Court, however, cannot look at the defence of the defendant or the

documents relied upon by the defendant Sec. D. Ramachandran Vs. R.V.

Janakiraman and Others, . Learned Single Judge fell in error in placing reliance upon the material supplied by the defendant, which alone is

sufficient to set aside the impugned order. Learned Single Judge instead of proceeding to reject the plaint dismissed the suit, which approach is also

erroneous. The effect of dismissal of suit is altogether different and distinct from the effect of rejection of the plaint. In case plaint is rejected under

Order 7 Rule 11 C.P.C. filing of a fresh plaint in respect of the same cause of is specifically permitted under Rule 13 of Order 7 CPC. Altogether

different consequence follows in the event of dismissal of suit, which has the effect of precluding the plaintiff to file a fresh suit on the same cause of

action. Rejection of plaint takes away the very basis of the suit rendering as if there was no suit at all for that no suit was instituted. Order of

dismissal of suit while recognizing the existence of a suit indicates its termination. While deciding the application under Order 7 Rule 11 C.P.C.

learned Single Judge ought not and could not have dismissed the suit. Even in the decision of the Supreme Court in T. Arivandandam's case

(supra) relied upon by learned counsel for the appellant, it was held that if on a meaningful not formal reading of the plaint it is manifestly vexatious

and meritless, in the sense of not disclosing a clear right to sue, the trial court should exercise his power under Order 7 Rule 11 C.P.C. taking care

to see that the ground mentioned therein is fulfilled. In order to fulfill that ground bare allegation made in the plaint and documents filed therewith

were required to be looked into, which in the instant case clearly disclosed at least a cause of action against the defendant that defendant was liable

for damages for its acts of omission and commission. It would be an altogether different situation that the plaintiff might not ultimately succeed in

obtaining a decree against the defendant or that Court might come to the conclusion that suit would not be maintainable against the defendant and

that plaintiff had a cause of action only against defendant's principal and its parent unit in Hong Kong, but such aspect could not have been gone

into at this stage. Three paragraphs of the plaint quoted above in our view do clearly disclose cause of action for the plaintiff to claim damages.

21. In catena of judgments, this court as well as the Hon''ble Apex Court has defined what is cause of action. It is well settled that the cause of

action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.

22. In *Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others*, , the Apex Court has held as follows:

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written

statement or in an application for rejection of the plaint. The court has to read the entire plaint as a whole to find out whether it discloses a cause of

action and if it does, then the plaint cannot be rejected by the court exercising the powers under Order 7 Rule 11 of the Code. Essentially, whether

the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety

taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said

purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to

misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires

determination by the court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint.

In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has

rightly said that the powers under Order 7 Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff/appellants.

23. As stated earlier, for the rejection of plaint, the court has to look into the averments made in the plaint to find out as to whether there exists any

cause of action for the plaintiff to get a relief against the defendant.

24. The plaintiff has filed the suit for permanent injunction claiming that he is the owner of the script under Sec. 14(a) of the Act. Such right has to

be established by the plaintiff in the Suit. It is immaterial whether he is going to succeed in his suit or not. As far as the observation of the Division

bench are concerned, as rightly pointed out by the Apex Court, such observation has no effect while disposing of the main suit.

25. The bundle of facts as disclosed by the plaintiff would show that he has cause of action against the applicants. The averments would show that

he is the author of the script which was cinematographed as Film for public view; u/s 14(a) of the Act he retains the Copy right; and the act done

by defendants gives rise to a cause of action. Without influenced by the order of the Division Bench, this court is of the considered view that the

legal position is still kept open. Therefore, the petition as such is not maintainable and is liable to be dismissed. Accordingly, the petition is

dismissed. Post the main suit in the regular course.