

(2009) 04 MAD CK 0553

In the Madras High Court

Case No : O.A. No. 21 of 2009 in C.S. No. 36 of 2009

V. Elango

APPELLANT

Vs

Susi Ganesan, Film Director, Devi Sri Prasad, Music Director
and "Kalaipuli" S. Thaanu, Film Producer

RESPONDENT

Date of Decision : 18-04-2009

Acts Referred:

Citation : (2009) 3 LW 218

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : Karuppan, for K.V. Sundarrajan, for the Appellant; V. Balu, for the Respondent

Judgement

M. Jeyapaul, J.—The application is filed seeking interim injunction restraining the respondents and their agents from in any manner exploiting, making or selling by infringing the audio/video rights of the applicant in the lyrics referred to in the schedule mentioned in the plaint.

2. Brief contention of the applicant:- The applicant has been writing lyrics for various Tamil cinematograph movies. The third respondent, having admired the skills of the applicant, called him on 8.7.2007 and made a request to contact the first respondent in connection with writing lyrics for the Tamil cinematograph film "Kandasamy". The applicant contacted the first respondent over phone. Thereafter, the applicant met the first respondent at Hotel Park Sheraton where the first respondent briefed him about the situation of a song to be composed for the said film. The applicant prepared a part of the lyrics and read out a few lines over phone to the first respondent on 10.7.2007. The first respondent sent a compact disc containing a tune for the song on 11.7.2007. On 12.7.2007, the applicant prepared several options for the "Pallavi" and "Saranam" for the song and handed over to the first respondent in the presence of the second respondent at the latter's residence cum composing theatre in Chennai. The attempt made by the applicant to contact the respondents to get back the lyrics

did not fructify. The lyrics written by the applicant was telecast live on the Tamil Satellite Channel Sun TV on 23.9.2007 during the opening ceremony of Tamil cinematograph film "Kandasamy". Thereby the applicant's copyright on his literary work has been infringed by the respondents. Therefore, the applicant has sought for ad interim injunction as stated above.

3. The third respondent filed counter which is adopted by the first and second respondents. The brief counter contention of the respondents reads as follows:

The applicant has never written any lyric. He has rushed to this Court with oblique motive to extract money from the respondents. There is no agreement between the applicant and the respondents for the subject lyric. The second respondent had composed the tune and he himself had used the appropriate words for the song and recorded the same in the compact disc. The said compact disc would have accidentally landed in the hands of the applicant as the applicant used to approach the office of the second respondent requesting for a chance. As the applicant had never composed a song for the Tamil film "Kandasamy", the applicant cannot be termed as the owner of the copyright. The applicant has no prima facie case. Therefore, the respondents would submit that the application deserves dismissal.

4. Learned Counsel appearing for the applicant would vehemently submit that the voluminous documents filed on the side of the applicant would go to establish that the applicant is the owner of the subject lyric. Taking advantage of the fact that no agreement was entered into between the applicant and the respondents, the respondents have started infringing the copyright owned by the applicant with respect to the said lyric. The self-contradictory stand taken by the respondents with respect to the authorship of the subject lyric would go to show that the second respondent never composed the song. Therefore, he would submit that the applicant has made out a prima facie case and therefore, he is entitled to interim injunction as prayed for.

5. Learned Counsel appearing for the respondents would submit that no material has been produced by the applicant to show that he is the author of the subject lyric. The documents produced on the side of the applicant have been created for the purpose of this case. It is his further submission that in the film industry, such blackmailing is quite usual. When there is no agreement to establish the right of the applicant with respect to the subject lyric, the question of granting an order of injunction does not arise, he would submit.

6. The fact remains that there was no agreement entered into between the applicant and the respondents with respect to the composition of the subject lyrics. But, the material circumstances put forth by the applicant will have to be carefully analysed to come to the conclusion whether the authorship claimed by the applicant with respect to the lyric is true or not.

7. The applicant, from his possession, produced a tune CD which starts with the song "Excuse me Mr. Kandasamy" sung by a lady alongwith the Music Director,

the second respondent herein. There is no denial from the second respondent that his voice does not find a place in the said tune CD produced before the court for hearing. The second respondent, on the other hand, has set up a plea that the tune CD would have landed the applicant as he was in search of some chance for composing lyrics. The explanation of the second respondent for the possession of the tune CD by the applicant does not appear to be satisfactory. If at all, the applicant has no connection with the song which starts with "Excuse me Mr. Kandasamy", there will be no occasion for the applicant to possess the tune CD created by the second respondent. Even if the applicant had come to possess accidentally the said tune CD, the second respondent, who is in the film industry for a long time, would not have left the tune CD for such a long period in the hands of the applicant.

8. According to the applicant, he handed over the lyrics to respondents 1 and 2 at their office cum residence on 13.7.2007. The applicant has produced a self-addressed sealed cover containing the lyrics composed by him with the certificate of posting dated 16.7.2007. The said sealed cover was opened only in the open court. The composition done by him earlier on 10.7.2007 to the following effect is found in the sealed cover:

Hey, Excuse me, Mr. Kandasamy Oru Coffee Kudippom come with me Hot aa cold aa You now touch and see

9. The self-addressed cover produced with the certificate of posting before this Court is found to be authentic. If the sealed cover has not been sent on 16.7.2007, the Postal Department would not have affixed its seal on the sealed cover and the Department also would not have put its seal on the Certificate of Posting sent by the applicant. The self-addressed sealed cover which contains the Pallavi part of the song which starts with "Excuse me Mr. Kandasamy" reinforces the plea of the applicant that he is the author of the Pallavi scripted by him on 10.7.2007. It has been established prima facie that the VCD containing the infringed Pallavi portion of the song "Excuse me Mr. Kandasamy" had been telecast at the opening ceremony of the film "Kandasamy" on Sun Television Network on 23.9.2007.

10. Of course the author of the news item and the publication found in a magazine will have to be examined to establish the authenticity of a disputed news item. But, at the stage of disposing of an application seeking interim injunction, the court can treat them as a supportive document.

11. On 24.9.2007, a news item regarding the film "Kandasamy" was published in the newspaper "Dina Thanthi". It has been flashed in the newspaper that one Vivega composed the song for the film "Kandasamy". The said news item does not disclose that the second respondent authored the composition of the controversial song "Excuse me Mr. Kandasamy" in the film "Kandasamy". If such a news item carried a wrong message to the public, cinema-goers and the people working in the cinema industry, the second respondent, who is in the film world,

would have definitely refuted the authorship of the film songs in "Kandasamy" reported in the news item.

12. But, in the VCD trailer of the film "Kandasamy", Mr. Vairamuthu is projected as the lyricist of the songs in the film "Kandasamy". The respondents have not chosen to deny the projection of Mr. Vairamuthu, lyricist for the songs in the film "Kandasamy" in the VCD trailer.

13. The court finds that there are four versions found as to the authorship of the subject lyric. One version would say that Mr. Vivega scripted all the lyrics in the film "Kandasamy". The other version would say that Mr. Vairamuthu authored the lyrics in the film "Kandasamy". The third version discloses that the second respondent coined the words for the song which starts with "Excuse me Mr. Kandasamy". The fourth version is that the applicant authored the subject lyric for the film "Kandasamy".

14. In the above facts and circumstances, the court finds that the applicant has produced enormous materials to show prima facie that it was he who authored the Pallavi "Hey Excuse me Mr. Kandasamy, Oru Coffee Kudippom come with me, Hot aa or Cold aa, You now touch and see". The respondents have no right to infringe the above Pallavi without the permission of the applicant. The appropriation of the Pallavi part of the lyric scripted by the applicant without the permission of the applicant will cause loss to the applicant. The balance of convenience is also found in favour of the applicant.

15. Therefore, there shall be an order of injunction restraining the respondents or their agents from in any manner exploiting, making or selling by infringing the copyright of the literary Pallavi work "Hey Excuse me Mr. Kandasamy, Oru Coffee Kudippom come with me, Hot aa or Cold aa, You now touch and see". It is made clear that the above order of injunction will operate only as against the above Pallavi portion of the song. The application is ordered accordingly. There is no order as costs.