

(2019) 07 DEL CK 0248

In the Delhi High Court

Case No : Civil Suits (COMM) No. 1329 Of 2016

Yash Raj Films Pvt Ltd

APPELLANT

Vs

Sri Sai Ganesh Productions & Ors

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 22 Rule 3
Copyright Act, 1957 — Section 13(1)(b), 13(3)(a), 13(2)(d), 14, 14(d)(i)

Citation : (2019) 80 PTC 200

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Suveni Bhagat, Sajal Jain, Yuganshu Sharma

Final Decision : Disposed Off

Judgement

“

Manmohan, J",,,

1. The present suit has been filed for permanent injunction, rendition of accounts and damages. The prayer clause in the present suit is reproduced",,,

hereinbelow:-,,

â??(i) Pass a decree permanently restraining and enjoining the Defendants, their servants, employees, representatives and agents, jointly and",,,

severally, from violating and infringing, in any manner, the copyrigyhts of the Planitiff comprised in and over the movie BAND BAAJA BAARAAT",,,

and from dubbing or releasing the movie JABARDASTH in any other language including Tamil, and from releasing the movie JABARDASTH on any",,,

other format including on DVDSs, VCDs Blu-ray discs or in any other electronic or magnetic format including on the television, and from showing the",,,

movie JABARDASTH in theaters across the country;,,

(ii) Pass a decree in favour of the Plaintiff and against the Defendants jointly and severally directing the Defendants to render accounts of the income,,

received in any manner from the movie JABARDASTH or from any of the works comprised in that movie and thereafter award damages to the,,

Plaintiff in the sum of Rs.20 lacs or such higher amount as may be determined or ascertained after rendition of accounts by the Defendants;,,

(iii) Award interest at 18% p.a. on the damages awarded to the Plaintiff;,,

(iv) Award costs; and,,

(v) Pass such other or further orders as this Honâ??ble Court may deem fit and proper in the interest of justice.â??,,

(emphasis supplied),,

2. Vide order dated 06th March, 2013, this Court granted an ex-parte ad interim injunction in favour of the plaintiff and against the defendants. The",,

relevant portion of the said order is reproduced hereinbelow:-,,

â??10. Having regard to the submissions made by the learned Senior Advocate for the plaintiff as noted hereinabove and upon perusing the,,

averments made in the plaint and the documents placed on record, this Court is of the prima facie opinion that the plaintiff are entitled to grant of an ex",,

parte ad interim injunction in its favour. Accordingly, the defendants, their representatives, distributors, agents, etc., are restrained from releasing the",,

Telugu film â??JABARDASTHâ? in any other format, including, DVDs, VCDs, Blu-ray discs or in any other electronic or magnetic format including",,

on television, till the next date of hearing.â??",,

3. On 21st August, 2014, this Court had granted the defendant nos. 1 and 2 an opportunity to place their Written Statements on record, by condoning",,

the delay subject to payment of costs within four weeks. However, the said order was not complied with.",,

4. Consequently, vide order dated 01st December, 2014, the right of the defendant nos. 1 and 2 to place their Written Statement on record was closed",,

and their defence was struck off. Further, vide order dated 29th January, 2015, defendant nos. 1 and 2 were proceeded ex-pate.",,

5. On 08th February, 2018, the present suit was decreed qua defendant no. 3 (Director of the defendantâ??s film) in accordance with I.A.",,

No.1881/2018 filed under Order XXIII Rule 3 read with Section 151 CPC. In the aforesaid application, the defendant no.3 acknowledged the plaintiff",,

to be the owner of copyright of the script, screenplay, dialogues and all other works which could be said to be copyright of the movie "BAND",,

BAJA BARAT". The relevant portion of the joint compromise application is reproduced hereinbelow:-,,

3. That the Defendant No. 3 acknowledges the Plaintiff to be the owner of the copyright of the script, screenplay, dialogues, and all other works",,

which can be copyrighted, of the movie "BAND BAAJA BAARAAT". Without any admission of liability as mentioned in the Plaint in the",,

aforementioned Suit, the Defendant No. 3 agrees that the Suit may be disposed of against it in terms of Prayer (i) in the Plaint".,,

(emphasis supplied),,

6. On 02nd May, 2019, learned counsel for plaintiff gave up prayers (ii) and (iii) of the plaint. The statement made by learned counsel for plaintiff was",,

accepted by this Court and the plaintiff was held bound by the same. On the same day, arguments were heard and judgment was reserved.",,

7. The relevant facts of the present case are as follows:-,,

a. The plaintiff is a company engaged inter alia in production, direction and marketing etc. of films and over the years has attained an unparalleled",,

reputation both in India as well as across the world.,,

b. On 24th September, 2010, the plaintiff announced the release of its film BAND BAAJA BAARAAT (hereinafter referred to as "the",,

Plaintiff's Film"). The story line of the film is of the hero and heroine starting their own wedding planning company, falling in love, followed by",,

the hero and heroine parting of ways and ultimately reuniting.,,

c. On 10th December, 2010 the Plaintiff's Film was released across 629 screens in India and 114 screens in other countries. The Plaintiff's Film",,

received numerous positive reviews from reviewers and film critics. The Plaintiff's Film completed hundred days in theatres and continued to be,,

screened on 122 screens in India as on 17th March 2011. The Plaintiff's Film also received numerous awards and accolades.,,

d. During the financial year 2010-2011, the Plaintiff's Film earned a total revenue of Rs. 21,18,83,661/- in India and around Rs. 3.5 crore outside",,

India.,,

e. Plaintiff is the owner of copyright in various original works that subsist in the Plaintiff's Film including but not limited to the story line, dialogues,",,

theme, concept, plot, script, music, lyrics, character sketches etc. The plaintiff is entitled to copyright protection under Section 14 of the Copyright Act,",,

1957.,,,

f. In April, 2011, the plaintiff decided to remake the aforesaid Film in Tamil and Telugu languages. The plaintiff signed various artists and incurred an",,,

expenditure of over Rs.1 crore in payment to the artists for this project.,,,

g. In May, 2011, by way of abundant precaution, the plaintiff issued a public notice in Tamil and Telugu languages which stated that it had not sold the",,,

S. No.,BAND BAAJA BAARAAT,JABARDASTH

1., "Hero and his friend go to a random wedding

and have free food there because cook at

the wedding is a known guy (to Hero)", "Hero and his friend go to a random wedding and

have free food there because cook at the wedding is

a known guy (to Hero's friend)

2., "Idea of heroine telling her parents that she

wants to start her own business, become big

and then only get married or else she will

have to keep taking care of the house and

her kids all her life.", "Idea of heroine telling her parents that she wants to

start her own business, become big and then only

get married or else she will have to keep taking care

of the house and her kids all her life.

3., "Heroine wants to start a wedding planning

company", "Heroine wants to start an event management

(mostly wedding planning) company

4., "Hero & Heroine join leading wedding

planner to learn business", "Heroine considers joining leading wedding planner to

learn business

5., "Hero offered the job first with the Leading wedding planner (chandha) and then hero convinces her to take heroine also", "Hero gets the job first with the Leading wedding planner and then hero is forced to convince her to take heroine also

6., "Hero & Heroine quit and start their own wedding planning company", "Hero and Heroine start their own event management company

7., "Known flower guy introduces a new cook instead of the earlier established cook", "Known flower lady introduces a new cook instead of the earlier established cook.

8., "Heroine's father comes to the first wedding organized and meets the Hero", "Heroine's father comes to the first event organized and meets the Hero

9., "Decision to plan small budget weddings to begin with", "Decision to plan small budget events to begin with

10., "Hero & Heroine get big break when they convince a rich engaged couple and get their wedding planning contract", "Hero & Heroine get big break when they convince a rich guy to plan his parent's 50th wedding anniversary

11., "Heroine falls in love with the Hero after the first big wedding", "Heroine falls in love with the Hero after the first big event

12., "Heroine comes to know Hero not in love with her", "Heroine comes to know Hero not in love with her

13., "Hero & Heroine part ways and start their individual wedding planning companies", "Hero & Heroine part ways and start

their individual

event management companies

14., "Both falter in their respective management

due to the absence of the other.", "Both falter in their respective management due to

the absence of the other.

15., "Due to certain circumstances they are

forced to work together again", "Due to certain circumstances they are forced to work together again

16., "Hero asks the Heroine to forget the past and

become business partners again", "Hero asks the Heroine to forget the past and become business partners again

17., "Heroine already engaged to another guy in a

foreign country", "Heroine already engaged to another guy in a foreign country

18., "Hero & Heroine confess their love for each

other", "Hero & Heroine confess their love for each other

19., Ainvai Ainvai hand movement dance step, Similar step in the first song

k. Legal notices dated 31st January 2012, 4th May 2012 and 7th February, 2013 as Ex. PW 1/23, Ex. PW 1/25 and Ex. PW 1/26.",,

l. Websites extract of press release showing details of plaintiffs remaking the Plaintiff's film in south India as Ex. PW 1/24(COLLY).,,

m. Websites extracts containing media reviews of the defendant's film showing its similarities with the Plaintiff's film as Ex. PW 1/29(COLLY).,,

12. Learned counsel for the defendant submitted that this Court did not have the territorial jurisdiction to deal with the present matter as the impugned,,

film was conceived, written and directed in Hyderabad and no part of its preparation including post production work had taken place in New Delhi.",,

13. Per contra, learned counsel for the plaintiff submitted that this court had the jurisdiction to deal with the present matter as, the defendant's film",,

was released pan India including Delhi.,,

14. In a similar case of copyright infringement being MRF limited V. Metro Tyres

Limited, CS(COMM) 753/2017 decided on 01st July, 2019, this",,

Court has held that a film is recognised as being more or greater than the sum of its parts and copyright subsists in a "cinematograph film" as a,,

work independent of underlying works that come together to constitute it. Further, though the expression "original" is missing in Section 13(1)(b)",,

of the Copyright Act, 1957, yet the requirement of originality or intellectual creation is brought in through Sections 13(3)(a) and 2(d).",,

15. This Court also held that the expression "to make a copy of the film" in Section 14(d)(i) does not mean just to make a physical copy of the,,

film by a process of duplication. Further, as the scope of protection of a film is at par with other original works, the test laid down in R.G. Anand v.",,

M/s Deluxe Films and Ors. (1978) 4 SCC 118 would apply. Accordingly, this Court will have to compare "the substance, the foundation, the",,

kernel" of the two films. The relevant portion of the judgment in MRF limited V. Metro Tyres Limited (supra) is reproduced hereinbelow:-,,

"60. Moreover, a "cinematograph film" may not infringe any of its underlying works, namely, a literary, dramatic, musical or artistic work, but",,

may nevertheless lack originality because it infringes another cinematograph film. In other words, in terms of Section 13(3)(a), a film must not be a",,

copy of any other work, including any other film.",,

xxxx xxxx xxxx xxxx,,

82. Consequently, this Court is of the view that "to make a copy of the film" does not mean just to make a physical copy of the film by a process",,

of duplication, but it also refers to another film which substantially, fundamentally, essentially and materially resembles/reproduces the original film.",,

Accordingly, the blatant copying of fundamental /essential/distinctive features of the plaintiff's advertisement on purpose would amount to copyright",,

infringement. Consequently, the Court will have to compare "the substance, the foundation, the kernel" of the two advertisements to consider",,

whether one was "by and large a copy" of the other and whether an average viewer would get an unmistakable impression that one work was a,,

copy of the other.",,

(emphasis supplied),,

16. In the present case, this Court is of the view that the defendants have

blatantly copied the fundamental, essential and distinctive features as well as",,
forms and expression of the plaintiff's film on purpose and consequently, have
infringed plaintiff's copyright in the film "BAND BAJA",,
BARAT. The fact that defendant no. 3, Director of the impugned Film, had
consented to the suit being decreed in terms of prayer (i) of the plaint",,
fortifies the aforesaid conclusion.,,

17. This Court is further of the opinion that it has jurisdiction to decide the
present case as the impugned film was released in Delhi too. This Court is,,
also of the opinion that the defendants have no real prospect of defending the
claim as their defence had been struck off and they have not denied the,,
documents of the plaintiffs. In fact, the evidence of the plaintiff's has gone
unrebutted.",,

18. In view of the above, the suit is decreed in favour of the plaintiff and against
defendants in terms of the prayer clause (i) and (iv) of the plaint. The",,
costs shall amongst others include the lawyer's fees as well as the amount spent
on Court-fees. Registry is directed to prepare a decree sheet,,
accordingly. Consequently, the present suit and application stand disposed of.",,