

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION (L) NO. 768 OF 2013****IN****SUIT (L) NO. 283 OF 2013**

Salim Khan and another

...Applicants

In the matter between:

Salim Khan and another

... Plaintiffs

Vs.

Sumeet Prakash Mehra and others

...Defendants

Mr. Ravi Kadam, Senior Advocate, along with Mr. V.R. Dhond, Senior Advocate, Mr. Chirag Mody, Ms. Pooja Kshirsagar, Mr. Ashok Purohit, Ms. Shalaka Mali and Ms. Ketki Kulkarni, instructed by M/s. Ashok Purohit & Co., for the Plaintiffs.

Mr. D.D. Madon, Senior Advocate, along with Mr. Rajiv Kumar, Senior Advocate, Ms. Snehalata Paranjape, Ms. Sneha Phene, Mr. J.P. Kapadia, Mr. Fozan Lakdavalala and Mr. Sajid Ali, instructed by M/s. Little & Co., for Defendant Nos. 1 and 2.

Dr. Veerendra V. Tulzapurkar, Senior Advocate, along with Mr. Ameet Naik, instructed by M/s. Naik Naik & Company for Defendant Nos. 3 and 4.

Mr. Janak Dwarkadas, Senior Advocate, along with Mr. Ankit Lohia and Ms. Gowree Gokhale, instructed by Nishith Desai Associates, for Defendant No. 5.

Mr. D.J. Khambata, Senior Advocate, along with Mr. S. Iyer, instructed by M/s. Ganesh & Co., for Defendant No.6.

CORAM: S.J. KATHAWALLA, J.**Judgment reserved on: 14th August, 2013****Judgment pronounced on: 2nd September, 2013**

JUDGMENT:

1. The above Suit is filed by the Plaintiffs, inter alia for restraining the Defendants by a permanent order and injunction from infringing the copyright of the story, dialogues and screen play of the Hindi Feature Film "Zanjeer" produced in the year 1973 and for a permanent mandatory order of injunction restraining the Defendants from in any manner exhibiting, releasing, displaying, communicating to the public anywhere in the world the remake film "Zanjeer" in Hindi and Telugu languages or any other language. The Plaintiffs have also taken out the above Notice of Motion seeking an order and injunction restraining the Defendants from in any manner exhibiting, releasing, displaying, communicating to the public anywhere in the world the said remake film "Zanjeer" and its trailers in Hindi and Telugu languages or any other language and also from proceeding with filming or carrying out any pre-production or post-production or other work in respect of the said remake film "Zanjeer" in Hindi and Telugu languages or any other language.

2. Plaintiff No. 1 – Shri Salim Khan and Plaintiff No.2 – Shri Javed Akhtar are well-known authors and writers of story, screen play and dialogues in the Indian Film industry for the last several decades. The Plaintiffs have together written stories, screen play and dialogues of several blockbuster movies like Sholay, Zanjeer, Trishul, Deewar, Andaz, etc. The Plaintiffs have received

several awards and accolades for their story, dialogues and screen play for several movies. The Plaintiff No. 2 is also a well-known poet and lyricist and has won numerous National Awards for the songs written by him. The Plaintiff No. 2 was also awarded the Padma Bhushan in the year 2007.

3. Defendant Nos. 1 to 3 are the sons and only legal heirs of late Shri Prakash Mehra, who was a well-known film producer and Director. Defendant No. 4 – Adai Mehra Productions Pvt. Ltd. is a Private Limited Company duly incorporated under the Companies Act, 1956 and Defendant No. 5 – Flying Turtle Films is a partnership concern. Defendant No. 4 has entered into a Co-Producers Agreement dated 25th August, 2011, with Defendant No. 5, whereby the Defendant No.4 has agreed to take Defendant No. 5 as a Co-Producer of the said remake film “Zanjeer” in Hindi and Tamil languages. Defendant No. 6 is a Private Limited Company incorporated under the Companies Act, 1956. Defendant Nos. 4 and 5 have entered into an Agreement dated 26th January, 2012, with Defendant No.6, whereby the Defendant No.6 has agreed to be associated with Defendant Nos. 4 and 5 to finance, produce, market and distribute the said remake film “Zanjeer” in Hindi and Tamil languages.

4. The facts as narrated by the Plaintiffs, in brief are set out hereunder:

5. According to the Plaintiffs, sometime in or about 1971-72, they were

approached by Shri Prakash Mehra and informed that he was desirous of producing and directing a Hindi feature film. He enquired if they had written any exceptional and fresh story. The Plaintiffs thereafter narrated the story and shared with Shri Prakash Mehra the bound script comprising of screenplay and dialogues written by them of the aforesaid story, which was immediately liked by the said Shri Prakash Mehra. Shri Prakash Mehra showed keen interest in making the said film "Zanjeer" on the story (script) written by the Plaintiffs.

6. Thereafter in 1973, the said Shri Prakash Mehra produced and directed the Hindi feature film "Zanjeer" ("the said film") starring Amitabh Bacchan and Jaya Bhaduri; the story, screenplay and dialogues of which was written by the Plaintiffs. The late Shri Prakash Mehra made the said film under his banner Prakash Mehra Productions. The said film was a mega hit and a block buster. The Plaintiffs won the Filmfare Award for the "best story" and "best screenplay of the year" for the said story written by them.

7. According to the Plaintiffs, they are the conceivers, writers, authors and owners of the story, screenplay (being a literary work) and dialogues (being a literary work) of the said film, which is evident from the credits of the said film, wherein the Plaintiffs' names appear as writers of the said story, screenplay and dialogues for the said film. The Plaintiffs are the authors and

owners of the story, script, dialogues and screenplay of the film titled “Zanjeer”, exhibited and released in 1973. This constitutes and embodies a literary work within the meaning of the Copyright Act, 1957 (“the Act”). It is submitted that the Plaintiffs wrote the script, screenplay and dialogues of the film jointly and the same is a work of joint authorship.

8. According to the Plaintiffs, the story, script and screenplay (literary work) had already been written and were existing works when Shri Prakash Mehra decided to make the film. The Plaintiffs were not commissioned by any Film Producer. The literary work was never commissioned by Shri Prakash Mehra, i.e. the same was already in existence prior to Shri Prakash Mehra approaching the Plaintiffs. According to the Plaintiffs, Shri Prakash Mehra was granted one time permission to make the said film as per the literary work. All other rights in the literary work were retained by the Plaintiffs. Therefore, the rights of the said M/s. Prakash Mehra Productions were restricted only to the cinematographic film “Zanjeer” made in the year 1973 and did not extend to the underlying “literary work” or for any other right since there was no authorization from the Plaintiffs to this effect. All the rights including the right to make (remake) a cinematographic film based on the literary work, in any language in the absence of any assignment under Sections 18 and 19 of the Act continues to remain with the Plaintiffs and no remake film can be made based on the said literary work by the Defendants, without the written

consent of the Plaintiffs.

9. According to the Plaintiffs, sometime later on (in the year 1973 itself), the Plaintiffs licensed the “remake rights” of the literary work in respect of all South Indian languages, in favour of Mr. S.V.S. Manian, Partner of M/s. Udhayan Productions, for a period of 25 years. This was a case of immediate contemporary exploitation by the Plaintiffs of their literary work. The said M/s. Udhayan Productions based on the remake rights so specifically granted, then produced the Tamil film “Siruthu Vazha Vendum” starring the high profile star - MGR and others. The Plaintiffs have produced an affidavit dated 31st December, 2012 (page 29 of the Plaint) wherein Mrs. Lalitha Manian, the wife of the deceased S.V.S. Manian has confirmed the grant of such a license by the Plaintiffs in favour of Mr. S.V.S. Manian. According to the Plaintiffs, the factum of such license to M/s. Udhayan Productions for all South Indian languages was well known to Shri Prakash Mehra and he never raised any claims or asserted any rights, in respect of the 'literary work'.

10. The Plaintiffs have set out in paragraph 3.10 of the Plaint that sometime in April, 2012, they learnt through press releases that Defendant Nos. 1 to 3 have given Defendant No.4 the alleged right to make a Hindi and Telugu film based on the story of the said film. According to the Plaintiffs, Defendant No. 3 met them in the first week of April, 2012, when the Plaintiffs

allegedly clarified and informed the Defendant No.3 that he would have to seek a license from the Plaintiffs to which Defendant No.3 agreed and sought time to revert. According to the Plaintiffs, the Defendant No.3 agreed in the meeting that the copyright in the said story vests with the Plaintiffs and that he is required to obtain a license for remaking a film based on the said story and assured that he would revert back to the Plaintiffs.

11. The Plaintiffs through their Advocates addressed a letter dated 16th April, 2012, to the Defendant No. 3 and the said Prakash Mehra Productions putting them to notice of the copyright of the Plaintiffs in the said story of the said film and called upon Defendant No. 3 to secure the appropriate licenses from the Plaintiffs prior to commencing any production work for the remake of the said film. It is pertinent to note that in paragraph 3.11 of the Plaint filed on 1st April, 2013, it is alleged that the Defendant No. 3 agreed in the meeting that the copyright in the said story vests with the Plaintiff and that he is required to obtain license for remaking a film based on the said story. No such admission on the part of Defendant No.3 is recorded in the said letter dated 16th April, 2012, which is written by the Advocates for the Plaintiffs, inter alia, to Defendant No.3 immediately after the said meeting. The Defendant No. 3, as well as his brothers Shri Sumeet Prakash Mehra (Defendant No.1) and Shri Puneet Prakash Mehra (Defendant No. 2) through their Advocate's letter dated 15th May, 2012, called upon the Advocates for the Plaintiffs to provide copies

and inspection of the documents referred to and relied upon by them in their notice dated 16th April, 2012, including the purported license agreement made between the Plaintiffs and the Tamil Production Company i.e. M/s. Udhayan Productions, granting a license to remake the film titled "Sirithu Vazha Vendum" in Tamil language, and released in 1974. Again, Defendant Nos. 1 and 2 through their Advocate's letter dated 6th June, 2012, further replied to the letter of the Plaintiffs' Advocates dated 16th April, 2012, wherein Defendant Nos. 1 and 2 denied the rights as claimed by the Plaintiffs and asserted that all rights including but not limited to all the intellectual property rights pertaining to the said film "Zanjeer" vest with the Producer of the film - Prakash Mehra Productions (through its Sole Proprietor Shri Prakash Mehra), and upon his death vests with his legal heirs. According to the Plaintiffs, in or about January, 2013, the Plaintiffs learnt that the Defendant No.4 has commenced and continued with the shooting of the remake of the said film in Hindi and Telegu languages.

12. According to the Plaintiffs, by their letter dated 9th January, 2013, they therefore filed a complaint before the Film Writers' Association ("FWA") and requested the Association to use its good offices to resolve and conclude the matter so as to protect the copyright of the Plaintiffs. According to the Plaintiffs, in the said letter they had only tentatively stated that the value of the said story and the said script for the purpose of using the same in the

remake film in Hindi and Telegu languages would be to the tune of an aggregate amount of Rs. 6 crores. According to the Plaintiffs, this was only a tentative assertion made by them at that point of time and they are not at all bound by the same. Though the Plaintiffs have in para 3.16 of the Plaint stated that, *"In or about January 2013, the Plaintiffs learnt that the Defendant No. 4 has commenced and continued with the shooting of the remake of said film in Hindi and Telegu language"*, in paragraph 5 of the said letter dated 9th January, 2013, the Plaintiffs have written to the President of FWA that, *"As you may now be aware, the said film "Zanjeer" is being re-made and the project is nearing completion"*. According to the Plaintiffs, the said FWA on 10th January, 2013 referred the said matter to the Federation of Western India Cine Employees ("FWICE") to examine and resolve the matter. Thereafter correspondence ensued between Defendant No.4 and FWA and on 4th February, 2013, Defendant No.4 appeared and sought time from FWICE. However, on 1st March, 2013, Defendant No.4 filed a Suit (Lodging) No. 179 of 2013 along with Notice of Motion (L) No. 474 of 2013 against the Plaintiffs. By the said proceedings, the Defendant No.4 sought an order of injunction restraining the Plaintiffs from claiming any rights in the story of the said film. An application for ad-interim relief was made on 5th March, 2013 inter alia seeking to restrain the Plaintiffs and Defendant Nos. 1 to 3 from interfering with or obstructing or creating any impediment in the production and release of the remake of the said film. By an order dated 5th March, 2013, this Court directed the

Defendants to file their affidavit-in-reply within two weeks from the date of the order and rejoinder, if any, within one week thereafter. The Notice of Motion was adjourned to 25th March, 2013, for hearing and final disposal.

13. In the meeting held on 12th March, 2013 before the FWICE, after hearing the Defendant No.4 and the Plaintiffs, the FWICE finally passed the following order:

“ (i) Since the case is under judicial consideration, we should wait for the decision of the Court in respect of the rightful owner, which is expected on the 25th March, 2013 as the date is for hearing and final disposal.

(ii) In view of the documents submitted by Shri Salim Javed to FWICE, the Dispute Settlement Committee Members of FWICE are of a unanimous opinion that Salim Javed are the rightful owners/ also because the members have not seen the evidential documents the other party claims to hold.”

The Plaintiffs thereafter filed the above Suit seeking reliefs set out hereinabove and also took out the above Notice of Motion for interim reliefs set out in paragraph 1 above. The Notice of Motion is taken up for hearing and final disposal.

14. The Learned Senior Advocate appearing for the Plaintiffs reiterated that Shri Prakash Mehra was granted one time permission to use the said literary

work to make the said film “Zanjeer” in 1973. The said Shri Prakash Mehra had no right in the copyright in the underlying literary work of the Plaintiffs. He submitted that the Defendants have adopted confusing pleas. They contend for different reasons that the copyright in the literary work never vested in the Plaintiffs but vested in Shri Prakash Mehra. They have also suggested that there existed an assignment from the Plaintiffs to Shri Prakash Mehra, which the Plaintiffs are withholding. It is submitted that the Defendant No. 6 has made a bald pleading of contract of service in its reply affidavit without giving any details or particulars of the same. It is submitted that Defendant Nos. 1 and 2 have also sought to claim that Shri Prakash Mehra having purchased the story from Shri Dharmendra, thereafter commissioned the Plaintiffs to write a full bound script for which they claim that the said Shri Prakash Mehra paid a sum of Rs. 55,000/- to the Plaintiffs. After referring to Sections 17, 18 and 19 of the Act, it is submitted on behalf of the Plaintiffs that the Defendants have neither made out a case of assignment of the copyright from the Plaintiffs to the said Shri Prakash Mehra nor have they made out any case of the Plaintiffs being commissioned by the said Shri Prakash Mehra to write a story, script/screen play for the cinematograph film “Zanjeer”. There is no agreement in writing between Plaintiff No. 1 and the said Shri Dharmendra “selling the story”. There is also no agreement in writing between the said Shri Dharmendra and the said Shri Prakash Mehra. Therefore, there is no agreement between the Plaintiffs and the said Shri

Prakash Mehra either for assigning the literary work nor any agreement for commissioning. Hence, the entire case sought to be set up by the Defendants of the said Shri Dharmendra first buying and then in turn selling the said story to Shri Prakash Mehra and thereafter the said Shri Prakash Mehra commissioning the Plaintiffs to write the bound script is false, bogus, patently fraudulent and is required to be rejected.

15. It is further submitted on behalf of the Plaintiffs that the grant of remake rights to M/s. Udhayan Productions clearly demolishes the case of the Defendants that the Plaintiffs were commissioned by the said Shri Prakash Mehra to write the script for the said film Zanjeer. It is submitted that since there is nothing to show as to how the Defendants acquired the title, the Defendants have put up their whole case on an incorrect understanding of an interview given by one of the Plaintiffs. It is submitted on behalf of the Plaintiffs that the only rights which the said Shri Prakash Mehra and the said Defendant Nos. 1 to 3 have in respect of the cinematograph film "Zanjeer" is the right as set out in Section 14 (d) of the Act viz. to make a copy of the film.

It is submitted that other than the aforesaid rights under Section 14 (d) of the Act, the said Shri Prakash Mehra did not have any other rights in the cinematograph film "Zanjeer". There is no statutory provision which stipulates that once the underlying literary work is used to make a cinematograph film, the author/owner of the underlying work loses all rights in the underlying

work. On the contrary, since the rights which are vested / enjoyed upon by an author/owner in any copyrighted work are only those which are stated in Section 14 of the said Act, the owner of the film only has limited rights as stated in Section 14 (d) of the Act, which is inter alia to make a copy of the said film. As decided in the matter of *Star India Private Limited vs. Leo Burnett (India) Pvt. Ltd. and another*, the copy of the film would mean to make a physical copy of that film and not to remake the film. Relying on paragraph 16 of the decision of the Hon'ble Supreme Court in the case of *Indian Performing Right Society Ltd. vs. Eastern Indian Motion Pictures Association and others¹ ("IPRS")*, it is submitted that as per Justice Jaswant Singh, the owner of the cinematograph film has the exclusive copyright in the film and the owner has the right to cause the film (including its visual and acoustic part) to be heard in public without any further permission of the author of original work. The copyright which is vested in the cinematograph film and its owner is qua that film only and not the underlying works. In other words, the copyright of the owner of the cinematograph film is restricted to the 'said film' and all other rights are retained by the author. It is submitted that in fact in the latter part of para 16 of the said judgment, it is observed that the composer of the lyric i.e. the owner of the underlying work retains the right to perform it in public otherwise than as part of the cinematograph film. Thus, it can be safely concluded that the copyright of the owner of the cinematograph film is only

1 (1977) 2 SCC 820

restricted qua 'that film' and not the underlying works. It is further submitted that Justice Jaswant Singh did not mean what is suggested by the Defendants, as is clear from paragraphs 21, 22 and 24 of the judgment of Justice Krishna Iyer. It is submitted that a harmonious reading and application of the judgment of Justice Jaswant Singh and the concurring judgment of Justice Krishna Iyer is required to be adopted and applied. Upon such a harmonious reading, it is clear and evident that the author of the underlying works which is incorporated in the film continues to be the owner of the copyright in the underlying works and the owner of the film/producer has copyright qua 'that film' only. Merely by incorporation of the underlying works in the film, the author does not lose the copyright in the work.

16. In support of the contention of the Plaintiffs that they continued to retain the copyright in the underlying works, the Plaintiffs relied on the decision of this Court (Coram: S.J. Vazifdar, J.) in the case of *Music Broadcast Pvt. Ltd. vs. Indian Performing Right Society*², paragraphs 36, 37, 38, 40, 41 and 42 and submitted that the judgment holds that once a literary work is subsumed in a cinematograph film or sound recording, the literary work qua that cinematograph film or sound recording cannot be enforced. However, such underlying literary work does not lose its existence and that such literary work continues to exist independent of the cinematograph film or sound

2 2011 (47) PTC 587 (Bom.)

recording. It is submitted that the words 'separate copyright' in Section 13 (4) of the Act refers to the copyright in the works other than as part of the cinematograph film or sound recording and that such separate copyright subsists and can be exercised by the owners thereof. It is submitted that therefore the argument that once the right to make cinematograph film or sound recording is given, the owners of the underlying works cannot themselves make or allow another to make another independent cinematograph film or sound recording containing such work was rejected. In support of this submission, the Plaintiffs also relied on the judgment of the Delhi High Court in the case of *Gramophone Company of India Ltd. vs. Super Cassette Industries Ltd.*³. Relying on the decisions in *Gramophone Co. Ltd. vs. Stephen Carwardine & Co.*⁴ it was submitted that in that decision it is held that the multiple copyrights namely that of the authors in the primary works and of the producer(s) in the sound recording or recording (s) produced from the original works is a well-recognized concept in copyright law.

17. The Learned Senior Advocate appearing for the Plaintiffs has submitted that the Defendants have raised a grievance that the Plaintiffs have failed to produce the original literary work i.e. the bound script of the film "Zanjeer" made in the year 1973. He submitted that once Shri Prakash Mehra gave the Plaintiffs credit (in the film and elsewhere) of being the authors of

³ 2010 (44) PTC 541

⁴ Law Reports, 1934 (1) Ch 450

the story, script and screenplay, then the inference that follows is that Shri Prakash Mehra had recognized, accepted and admitted that the film "Zanjeer" was a cinematograph film in respect of the Plaintiffs' literary work. There was thus no need or purpose to produce the literary work. The film "Zanjeer" was a cinematograph depiction of the literary work. Further, the pleadings and the documents filed, contain clear admissions by the Defendants about the identity between the literary work and the actual film including the statement of Shri Prakash Mehra in his interview that the Plaintiffs are the authors of the script, story and screenplay of the film titled "Zanjeer" which was exhibited and released in 1973. It is submitted that in any event the bound script of the said cinematograph film "Zanjeer" was with the said Shri Prakash Mehra as the Plaintiffs had handed over the same to the said Shri Prakash Mehra for the purpose of making the said film "Zanjeer". It is also submitted on behalf of the Plaintiffs that Defendant Nos. 1 and 2 have themselves alleged that the work of writing the script was commissioned by the Plaintiffs. Thus, by contending that work was commissioned, they admit that "the work was created by the Plaintiffs".

18. The Learned Senior Advocate appearing for the Plaintiffs submitted that there is no delay or laches on the part of the Plaintiffs in approaching the Court as alleged by the Defendants. The Defendants in fact deliberately delayed the onset of litigation by assuring the Plaintiffs of a settlement. It is

submitted that after the notice dated 16th April, 2012, Defendant No.3 met the Plaintiffs on various occasions and confirmed that he would seek appropriate license from the Plaintiffs before making the film. The newspaper report dated 28th November, 2012, at page 107 of the Affidavit in reply of Defendant No.3 contains the confirmation of Defendant No. 3 having a meeting with the Plaintiffs with regard to the remake of the film "Zanjeer". It is submitted that given the rights relating to a period of 40 years ago, evidence of the Plaintiffs' rights was also required to be gathered. The Plaintiffs met Ms. Lalitha Manian and obtained her affidavit dated 31st December, 2012. Thereafter on 9th January, 2013, the Plaintiffs filed a complaint before the FWA, who in turn referred the complaint to FWICE, which is the apex body of all cine workers. At the request of Defendant No.3, the meetings were postponed to 25th February, 2013 and 12th March, 2013. Defendant Nos. 3 and 4 thereafter filed a suit against the Plaintiffs and Defendant Nos. 1 and 2 restraining them from interfering with his right to remake the film. On 5th March, 2013, the parties were directed to file their respective affidavits and the Notice of Motion was placed for final hearing on 25th March, 2013. The FWICE by its minutes of the meeting dated 12th March, 2013, held that the Plaintiffs have been able to establish their rights in the said story and that the Defendants have violated the copyright of the Plaintiffs by making the remake without the Plaintiffs' permission. Thereafter on 1st April, 2013, the present Suit was filed.

19. The Learned Senior Advocate appearing for the Plaintiffs also relied on several decisions of this Court as well as the Delhi High Court in support of his submission that a Defendant who after knowing of the claim of the Plaintiffs continues to infringe the rights of the Plaintiffs, will be deemed to be aware of the consequence which may follow due to such infringement, and if the Defendant continues to infringe the rights of the Plaintiffs, he does so at his own peril. Relying on the decision of the Hon'ble Supreme Court of India in the case of *Midas Hygiene Industries P. Ltd. vs. Sudhir Bhatia*⁵, it was submitted on behalf of the Plaintiffs that assuming for the sake of argument that there is some delay, then too, it is not sufficient to deny an order of injunction in the present matter, wherein the Plaintiffs' copyright is infringed. The Learned Senior Advocate appearing for the Plaintiffs has submitted that the Plaintiffs have in the present suit claimed only an order of injunction and no claim for damages is made in the present Suit. He submitted that the Defendants have wrongly contended that since the Plaintiffs have made a monetary claim before the FWA, the Plaintiffs have given a monetary value to their rights in the copyrighted work and hence no order of injunction should be passed. Relying on the decisions in (i) *Shelfervs City of London Electric Lighting Co.*⁶ and (ii) *Regan vs. Paul Properties Ltd.*⁷, wherein it is held that a wrongdoer is

5 (2004) 3 SCC 90

6 (1895) 1 Ch 287 CA

7 (2007) Ch 135

not entitled to ask the Court to sanction his wrongdoing by purchasing the Claimant's rights on payment of damages assessed by the Court, it is submitted that it would be oppressive to the Plaintiffs to be refused an order of injunction, as the Defendants have deliberately and knowingly proceeded with the new film despite being aware of the copyright of the Plaintiffs in the underlying works. It is submitted that therefore this Court ought to pass an order of injunction in favour of the Plaintiffs and against the Defendants as prayed for in the Notice of Motion and that damages is not an adequate remedy. The Learned Senior Advocate has also submitted that the Senior Advocate appearing for Defendant Nos. 3 and 4 have relied upon clause 9.13 of the report of the Standing Committee to allege that the legal position as understood by the Committee set up on the Copyright (Amendment) Bill, 2010 is that when a song or music or underlying work is incorporated in a film, it relates to the synchronization of the right of the author and music composer which is assigned to the producer of the film as per Section 17 (b), or that in the absence of an agreement, the film producer is the owner. It is submitted that reliance on such debates or reports of a Standing Committee is fraught with danger. The report is only a recommendation which the Legislature may (fully or partially) accept or reject. What is alone relevant is the text of the amended Act. The amended Act gives higher/further rights to authors.

20. The Learned Senior Counsel appearing for the Plaintiffs has therefore submitted that the Plaintiffs have prima facie established that they are the authors of the literary work of the film titled "Zanjeer" which was exhibited and released in 1973 and that the Defendants by making a remake of the film "Zanjeer" without obtaining permission from the Plaintiffs, are infringing the copyright of the Plaintiffs in the said literary work. It is submitted that the balance of convenience is also in favour of the Plaintiffs and against the Defendants. It is submitted that the Plaintiffs are therefore entitled to interim reliefs as prayed.

21. Mr. Madon, the Learned Senior Advocate appearing for the Defendant Nos. 1 and 2, submitted that in 1973, the Hindi film "Zanjeer" produced and directed by Shri Prakash Mehra was released and became a runaway blockbuster success. By this film, Shri Prakash Mehra had launched his home banner "Prakash Mehra Productions" which was the Sole Proprietary Concern of Shri Prakash Mehra. It is submitted that as a Producer of the film "Zanjeer", by virtue of the provisions of the Act, Shri Prakash Mehra became the full owner of the copyright to the said film and all the underlying work which got subsumed therein, including the story, screenplay and dialogues. Thus the Plaintiffs alleged right, if any, in the underlying literary work got subsumed in the rights of Shri Prakash Mehra as the Producer and Owner of all the copyright in the film and its underlying work. The remake rights thus vested

exclusively in Shri Prakash Mehra alone. It is submitted on behalf of Defendant Nos. 1 and 2 that the contention of the Plaintiffs that they had given only a one time permission to produce one film "Zanjeer" in Hindi language based on the story, screenplay and dialogues written by the Plaintiffs is incorrect and contrary to law. It is submitted that the provisions of the Act contemplate three types of written agreements viz. (i) under Section 19, being an assignment of copyright, (ii) under Section 30, being grant of a license of the copyright, and (iii) under Section 17 (b) and (c), requiring an agreement to the contrary. No such writing or document has been produced by the Plaintiffs. It is submitted that the Plaintiffs could claim copyright in the underlying literary work of the film viz. the story, screenplay and dialogues, only if there was a written signed agreement between the Plaintiffs and Shri Prakash Mehra. It was also contended by the Plaintiffs that the film was made without any changes in the bound script. Significantly there is no reference to any bound script in the notice of the Plaintiffs' Advocates' dated 16th April, 2012, nor in the Plaintiffs' own complaint to FWICE dated 9th January, 2013. Further, the allegation that no changes were made to the alleged bound script is not found in the Plaintiffs' Complaint but in purported affidavits belatedly produced by the Plaintiffs, of one Rakesh Kumar Sharma.

22. It is further submitted on behalf of Defendant Nos.1 and 2 that Shri Prakash Mehra had hired/employed the Plaintiffs for the script, story and

dialogues of “Zanjeer” and that it was a contract of service and not a contract for service within the meaning of Section 17 (c) of the Act in view of the following facts:

(i) That Shri Dharmendra had bought the story from Plaintiff No.1 for a sum of Rs. 2500/- when Plaintiff No. 2 was not on the scene at all; the Plaintiffs are attempting to obscure this deal by saying that the amount was paid as “shagun”; this is absurd especially in view of the video interview where Plaintiff No.1 himself has admitted that he sold the story to Shri Dharmendra for Rs. 2500/-.

(ii) that Shri Prakash Mehra purchased the story from Shri Dharmendra for Rs. 4000/- and had turned Producer launching his own banner “Prakash Mehra Productions”;

(iii) Defendant Nos. 1 and 2 have produced evidence/documents showing that payment was made to Shri Dharmendra and included in the sum of Rs. 59,616.93 which was the cost incurred by Shri Prakash Mehra for “story and screenplay” of “Zanjeer” and is reflected in the Income-tax assessment order dated 27th May, 1976 (Page 168), and the accounts of Prakash Mehra Productions (Page 171);

(iv) that the Plaintiffs were paid Rs. 55,000/- by Shri Prakash Mehra as a contract of service. It is admitted by Plaintiff No.1 in the said interview to Screen Magazine that the Plaintiffs were paid Rs. 55,000/- by Shri Prakash Mehra for the story and screenplay of “Zanjeer” (Page 167);

(v) The interview itself is also admitted by Plaintiff No.1 in his further affidavit in rejoinder dated 17th June, 2013 in paragraph 3 at page 174.

(vi) The affidavit of Mr. Rakesh Ningoo filed along with the further additional affidavit in reply on behalf of Defendant Nos. 1 and 2 affirmed on 1st May, 2013, at Page Nos. 153 to 156.

23. It is further submitted on behalf of Defendant Nos. 1 and 2 that the Suit filed by the Plaintiffs totally suppresses several facts and in the subsequent affidavits filed by the Plaintiffs, a totally contradictory case is made out. In support of this contention, it is pointed out that in paragraph 3.2 of the Plaint at page 5, the Plaintiffs have stated that "*The Plaintiffs state that some time in or about 1971/72, they were approached by Mr. Prakash Mehra and informed that he was desirous of producing and directing a Hindi feature film and enquired if they had any exceptional and fresh story written by them*". However, this is contrary to what is subsequently stated by the Plaintiffs in their affidavit in rejoinder dated 24th April, 2013 at page 138, paragraphs 5 and 6 viz. that it was Shri Dharmendra who suggested that Plaintiff No. 1 should offer the complete script to Shri Prakash Mehra and it was thereafter that the Plaintiffs narrated the complete script to Shri Prakash Mehra. The Plaintiffs were paid Rs. 55,000/- which evidenced a contract of service. Although the Plaintiffs admitted this payment in the interview given by Plaintiff No. 1 to Screen Magazine, the Plaintiffs have deliberately omitted any reference to this

payment, in the Plaint filed by them. It is further pointed out that the Plaintiffs have improvised upon their false and baseless story of having independently licensed their rights in "Zanjeer" for remaking the same in Tamil language. The Plaintiffs have in the Plaint contended that the purported license was granted by them to M/s. Udhayan Productions. The Plaintiffs have neither produced the alleged licenses nor has the name of Shri Manian been mentioned by the Plaintiffs in their letter dated 16th April, 2012. It is further pointed out that from the correspondence with FWICE as disclosed by the Plaintiffs, it appears that the Plaintiffs had furnished the purported documents to FWICE. However, in the Plaintiffs' Affidavit at page 124, the Plaintiffs have categorically asserted "*I respectfully submit that the Plaintiffs have never represented that they have any documents in their possession entered into by them with the said Prakash Mehra.*"

24. It is further submitted on behalf of Defendant Nos. 1 and 2 that the affidavits of Shri L. Suresh and Shri Rakesh Kumar Sharma at pages 177 and 180 sought to be relied upon by the Plaintiffs are of no evidentiary value whatsoever, inasmuch as the affidavit of Shri L. Suresh is based on hearsay and no documents whatsoever to establish any of the alleged transfers or assignments referred to therein, have been produced by Shri L. Suresh or the Plaintiffs. Further, the affidavit of Shri L. Suresh also contains absurd contentions of Shri Prakash Mehra having purchased the rights in Malayalam

language of the original film “Zanjeer”, which Shri Prakash Mehra himself had produced and directed.

25. It is next submitted on behalf of Defendant Nos. 1 and 2 that the Plaintiffs are guilty of extraordinary delay and laches which have not been explained by the Plaintiffs. It is submitted that the Plaintiffs were fully aware of the remaking of the film at least since November, 2011 and as is evident from the Plaintiffs' letter to FWA dated 9th January, 2013, the Plaintiffs were aware that the film was nearing completion. The Plaintiffs have however filed the present Suit and served the same upon the Advocates for Defendant Nos. 1 and 2 only on 5th April, 2013. Lastly, it is submitted on behalf of Defendant Nos. 1 and 2 that the Plaintiffs have not furnished inspection of several relevant documents and an adverse inference ought to be drawn against the Plaintiffs. It is therefore submitted on behalf of Defendant Nos. 1 and 2 that the Notice of Motion be dismissed with costs.

26. Dr. Veerendra Tulzapurkar, the Learned Senior Advocate appearing for Defendant Nos. 3 and 4, submitted that the issue that needs to be considered in the present Notice of Motion is whether the Plaintiffs have, *prima facie*, established their right in the original literary work after the original film was made by Prakash Mehra Productions. He submitted that the Plaintiffs have admitted that the original film ‘Zanjeer’ is produced by Prakash Mehra

Productions and Shri Prakash Mehra is the author of the same. The Plaintiffs therefore have no right to prevent the Defendants from making the remake of the original film; firstly because the right of the Plaintiffs in the literary work does not survive as far as incorporating the same in any film, after the original film was made and secondly, by granting a license to make the original film, the Plaintiffs cannot in law prevent the licensee or the licensee's successors from making any more films incorporating the original literary work.

27. Dr. Tulzapurkar submitted that it is not in dispute that the incorporation of the literary work created by the Plaintiffs in the original film was lawful and was with the express consent and knowledge of the Plaintiffs. Shri Prakash Mehra, the Sole Proprietor of Prakash Mehra Productions, was the Producer of the original film and therefore the author of the cinematograph film. The entire copyright in the original film vested in Shri Prakash Mehra and upon his death devolved on his heirs. By reason of the provisions of Section 17 (b) of the Act, as it stood prior to its amendment by Act 27 of 2012, Shri Prakash Mehra was the first owner of the copyright in the cinematograph film. By virtue of lawful incorporation of the literary work in the original film, Shri Prakash Mehra also acquired the entire copyright in the literary work (the underlying work in the original film), in so far as it relates to inclusion thereof in any cinematograph film, that is the right mentioned in Section 14 (1) (a)

(iv) of the Act.

28. Relying on paragraph 17 of the IPRS, Dr. Tulzapurkar submitted that as regards the right to communicate the underlying work as a part of the cinematograph film is concerned, the said right goes to the owner of the copyright in the cinematograph film and the owner of the copyright in the underlying works cannot interfere with that right.

29. Dr. Tulzapurkar submitted that the Legislature intended to give all rights under Section 13 (i) (a) of the Act to the authors in respect of any work incorporated in a cinematograph film i.e. including the right to make a cinematograph film provided for in Section 13 (i) (a) (iv) of the Act. This was because the Act prior to the amendment did not confer the rights vide Section 14 (1) (a) (iv) of the Act on the owner of the copyright in the underlying works after the same were incorporated in a lawfully made cinematograph film. The Court in interpreting the Act, if there is some ambiguity, can certainly look into the amendments made for construing the earlier Act. He submitted that a proviso to that effect was added in Section 17 by Act 27 of 2012 which reads as under:

“Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in

clause (a) of sub-section (1) of Section 13”.

It is submitted that the effect of the proviso is that the author of the underlying work in a cinematograph film retains all rights provided for in Section 13 (1) (a) of the Act. The aforesaid position is borne out by the statement of objects and reasons in paragraph 3 (viii). It is stated that the amendments proposed in the Bill, inter alia, seek to “give independent rights to authors of literary and musical works in cinematograph films”. Relying on paragraph (ix) of the Report of the Parliamentary Standing Committee (227th) Report on the Copyright Amendment Bill, 2010), Dr. Tulzapurkar submitted that thus the Amending Act i.e. Act 27 of 2012, the statement of objects and reasons and the report of the Parliamentary Committee clearly throw light on the position that existed prior to the amendment and the said position was that the author of any underlying work after the same was lawfully incorporated in a cinematograph film did not have or did not retain any independent copyright in the underlying work relating to the incorporation thereof in another film. Dr. Tulzapurkar therefore submitted that the Plaintiffs have no right to prevent the Defendants from making the remake of the original film which is owned by the Defendants in which the literary work of the Plaintiffs is lawfully incorporated. Alternatively, Dr. Tulzapurkar submitted that on the Plaintiffs own showing the Plaintiffs granted a license to Shri Prakash Mehra to incorporate their works in the original film. He submitted that no writing is produced by the Plaintiffs to

show that such right was in any manner restricted or that the license was a limited license. In the absence of any writing produced by the Plaintiffs, full meaning is required to be given to the provisions of Section 14 (1) (a) (iv) of the Act. The license to make a cinematograph film cannot be confined to one film but full meaning to the words in sub-section (1) (a) (iv) of the Act is required to be given. The licensee becomes entitled to make any cinematograph film in respect of the underlying literary work. It is for the Plaintiffs to show that the license granted by them was a restricted one and in the absence of any such proof, full meaning is required to be given to Section 14 (1) (a) (iv) of the Act and the licensee becomes entitled to make any number of films incorporating the literary work of the authors. It makes no difference as to whether the Plaintiffs had granted a license to somebody else as claimed by them. In support of this contention, Dr. Tulzapurkar relied on the decision in *Ram Sampat vs. Rajesh Roshan*⁸, paragraphs 4, 7, 9 (i) and 10. Dr. Tulzapurkar therefore submitted that on this ground also the Plaintiffs are not entitled to prevent the Defendants from the remaking of the original film.

30. It is also submitted that the stand taken by Defendant Nos. 3 and 4 and the arguments recorded by Dhanuka, J. in the order dated 3rd April, 2013, should be considered with a view that only vague claims were made by the Plaintiffs without any basis. The Defendant Nos. 3 and 4 as well as Defendant

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Nos. 1 and 2 repeatedly sought inspection of the documents on the basis of which the claim is made by the Plaintiffs. The Plaintiffs constantly refused to give inspection or disclose the same to the Defendant Nos. 3 and 4. As a result, litigation between the Defendant Nos. 3 and 4 and Defendant Nos. 1 and 2 continued. The submissions made by the Defendant Nos. 3 and 4 in the earlier proceedings are submissions which were made when the claim of the Plaintiffs was not before the Court and the Plaintiffs refused to disclose the documents. Now that the claim is made before the Court by the Plaintiffs, the submissions made by the Defendant Nos. 3 and 4 in the earlier proceedings when the disclosure of the basis of the claim was not made by the Plaintiffs, are not relevant. The Plaintiffs cannot be allowed to take undue advantage of the submissions recorded in the order dated 3rd April, 2013.

31. Dr. Tulzapurkar lastly submitted that the reliance by the Plaintiffs on the decision in the case of *Star India P. Ltd. vs. Leo Burnett (I) P. Ltd.* (supra) is misplaced. In that case what the plaintiffs were complaining of, was that the Defendant's advertising film was an infringement of the Plaintiff's film. There was no question of any underlying work being involved. The reliance by the Plaintiffs on the observations on page 39 is also misplaced. In that case the question as to who was the owner of the underlying work was not involved. If the plaintiffs in that case had pleaded that the advertising film of the defendants was an infringement of the underlying works, then the issue

whether the plaintiffs were the owners of the underlying work would have arisen. It is submitted that the issue was entirely different. The issue was whether making of another film or even re-shooting a film amounts to an infringement of a cinematograph film. In that case, it was held that in order to constitute infringement of a cinematograph film, it must be an exact copy that is a facsimile copy of the original film. The issue involved in the present case was far from consideration in the said case. Dr. Tulzapurkar therefore submitted that the Notice of Motion taken out by the Plaintiffs deserves to be dismissed with costs.

32. Mr. Janak Dwarkadas, the learned Senior Advocate appearing for Defendant No. 5 has tendered a detailed chronology of dates and events in the matter and has taken me through the same. He has pointed out what the Plaintiffs have from time to time stated qua their role in respect of the script, screenplay and dialogues concerning the film "Zanjeer". He also took me through the various news articles and the notice published in the Film Trade Magazine since 2nd November, 2012 qua the remake of "Zanjeer". Mr. Dwarkadas submitted that whilst the Plaint, in particular paragraphs 3.2 to 3.4, proceeds on the basis of joint ownership by Plaintiff Nos. 1 and 2, the case on authorship pleaded in the affidavits in rejoinder filed by Plaintiff No.1 (Paragraphs 5 and 6 page 138 and paragraph 13 page 142) and by Plaintiff No.2 (Paragraph 11 page 121) is at variance not only with each other but also

contrary to the case pleaded in the Plaint.

33. Mr. Dwarkadas submitted that Section 16 of the Act makes it clear that copyright subsists only in the works enumerated in the Act and no other. The Plaintiffs claim to be the author/owner of a literary work. In any suit for infringement of copyright in literary work, the literary work has to be in existence and produced before the Court in order to enable the Court to judge whether there has been any infringement of the copyrighted work. This is because it is trite law that copyright does not exist in ideas but only in the form in which the idea is reduced to writing and found to have been expressed. In other words, the fact that the Plaintiffs claim that they came up with an idea of an angry young police officer as the protagonist, would not by itself be sufficient to maintain an action for infringement. It is only when that idea is expressed in a particular form in writing and developed into an original story that copyright would subsist in the story as written and expressed in the literary work. In support of his contention Mr. Dwarkadas has relied on various decisions as set out in paragraph 3 of his written submissions. Mr. Dwarkadas has submitted that the failure of the Plaintiffs to produce the alleged copyright works cannot be cured by adopting the process of reverse engineering. He submitted that reverse engineering is a concept which applies in case of drawings, designs, etc. and does not apply in the case of copyright in a 'literary' work.

34. Mr. Dwarkadas further pointed out that it is apparent from the list of dates submitted by Defendant No. 5 that the Plaintiffs were aware of the making of the film since November, 2011. In fact, the Plaintiff No.2 in an interview dated 3rd November, 2011 (Exhibit- B page 65 of the affidavit in reply of Defendant No.6) stated that he saw no harm in the film being made. He further stated that “I only hope they make it well”. The Plaintiffs thereafter waited till April, 2013 to file the present Suit. He submitted that in view of the conduct of the Plaintiffs, the Plaintiffs are not entitled to any reliefs. He submitted that the Plaintiffs have in their letter dated 9th January, 2013 (Exhibit-E at page 38 of the Plaintiff) claimed a total of Rs. 6 crores as fair and reasonable for Hindi and Telugu remakes. The Plaintiffs having elected to opt for monetary compensation are not entitled to an injunction. He submitted that the judgment in the case of *Shelfer vs. City of London Electric Lighting Company* (supra) and *Regan vs. Paul Properties* (supra) relied upon by the Plaintiffs have no application to the facts of the present case inasmuch as in these judgments the Hon’ble Chancery Division and Court of Appeal were considering the question of whether the Court can grant relief by way of damages as a substitute for an injunction. He submitted that Section 55 of the Act provides for civil remedies for infringement of copyright viz. injunction, damages, accounts, etc. However, the test laid down for the purpose of determining the question of whether an injunction ought to be granted in a

particular case is to be found in Section 38 of the Specific Relief Act, 1963. In the present case, the Plaintiffs themselves have asserted that a sum of Rs. 6 crores would be a fair and reasonable monetary compensation and are therefore not entitled to an injunction. The Plaintiffs' claim falls within the provisions of Section 38 (3) (c) and not under Section 38 (3) (b) of the Specific Relief Act. Mr. Dwarkadas therefore submitted on behalf of Defendant No.5 that no relief ought to be granted in favour of the Plaintiff and the present Notice of Motion ought to be dismissed.

35. Mr. Khambata, the Learned Senior Advocate appearing for Defendant No. 6, submitted that the Plaintiffs' case is a continuously evolving one. In the legal notice sent by the Plaintiffs' lawyers dated 16th April, 2012, the Plaintiffs claimed to have copyright in the story, screenplay and dialogues of the original film "Zanjeer". In the said notice the Plaintiffs made no claim whatsoever on the copyright in the script of the original film "Zanjeer". The Plaintiffs also did not make any mention of Shri Dharmendra Deol, the famous actor in the legal notice. In their letter to the FWA, the Plaintiffs have changed the same to copyright in and limited to the story and script of the original film "Zanjeer". Defendant Nos. 1 and 2 replied to the aforesaid legal notice on May 15, 2012, requesting copies and inspection of documents relied upon by the Plaintiffs. Defendant Nos. 1 and 2 repeated their requests vide their letter dated 6th June, 2012. Till date no response has been received from the Plaintiffs or their

lawyers with regard to the requests made vide these letters. Thereafter the Plaintiffs placed their case in writing before the FWA vide their letter dated 9th January, 2013. It was thus after a gap of nine months of absolute silence that the Plaintiffs re-agitated their case. The Plaintiffs have in the Plaint for the first time alleged that they gave a one-time permission to Shri Prakash Mehra to use the literary work only, to make the film "Zanjeer" and that they had a bound script consisting of the screenplay and dialogues ready when Shri Prakash Mehra approached them. The Plaintiffs in the plaint have stated that Shri Prakash Mehra had approached them and informed that he was desirous of directing and producing a hindi feature film and was searching for an exceptional and fresh story written by them. The Plaintiffs thereafter narrated the story and shared a bound script comprising of the screenplay and dialogues written by them which was immediately liked by Shri Prakash Mehra. He showed keen interest in making the said film "Zanjeer". Thus no mention of Shri Dharmendra was found in the Plaint. However, when Defendant Nos. 1 and 2 filed their affidavit in reply on 16th April, 2013 and referred to an interview given by Plaintiff No.1 in which he had admitted selling the story of "Zanjeer" to Shri Dharmendra, the Plaintiffs made a dramatic change in their case. For the first time, in their affidavit in rejoinder dated 24th April, 2013, Plaintiff No.1 alleged that sometime in the year 1971, Plaintiff No.1 had an idea of a story in which the protagonist would be an angry young man who is a Police Officer, who has nightmares that he is

chained and is feeling helpless and trapped. Plaintiff No. 1 had narrated the story idea which was in the form of a broad outline for a film to the said Shri Dharmendra, who liked the idea and suggested that he should develop the complete script. He expressed his interest in acting in the film which would be made based on the said idea. He also suggested that Plaintiff No. 1 should offer the complete script as and when made to Shri Prakash Mehra with whom the said Shri Dharmendra was committed to do a film. Further, as per his customary habit, to show appreciation for the idea which appealed to him, he gave Plaintiff No. 1 a good luck amount of Rs. 2,500/- (shagun). The Plaintiff No.2 partnered with Plaintiff No.1, who then developed the said idea into a complete script.

36. Mr. Khambara submitted that therefore according to Plaintiff No.1, now there was no story written at all much less a story co-authored by the Plaintiffs together. There was according to him the "idea of a story" by Plaintiff No. 1 alone and then a complete script by him together with Plaintiff No.2. The Plaintiffs thus also abandoned the case of them having a ready bound script consisting of screenplay and dialogues written by them. It is submitted that the Plaintiffs have in the plaint approached this Court on the basis that the alleged copyrighted material was a "work of joint authorship". The definition of this term in Section 2 (z) of the Act is as follows:

" 2 (z) "work of joint authorship" means a work produced by

the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.”

It is submitted that hence it is essential that the collaboration between the Plaintiffs must be one where the contribution of Plaintiff No. 1 (one author) is not distinct from the contribution of Plaintiff No.2 (the other author). However, if the Plaintiff No.1's case in rejoinder is considered, then the Plaintiffs do not claim joint authorship of the literary work to start with viz. the story (or the idea of the story) because they do not claim to have made an identical contribution to the literary work of the story.

37. Mr. Khambata submitted that from the letter of Shri Dharmendra to FWICE dated 23rd April, 2013, it appears that: (i) Plaintiff No.1 narrated the “ story idea” of “Zanjeer” to Shri Dharmendra; (ii) Shri Dharmendra paid valuable consideration for that story, although it will be a matter of evidence whether the payment was to purchase the story (as stated by Plaintiff No.1 in his interview to ETC network) or as token blessing money as alleged in the rejoinder of Plaintiff No. 1; (iii) Shri Dharmendra narrated the story to Shri Prakash Mehra and asked him to take a script from the Plaintiffs based on the said story; and (iv) Shri Dharmendra then commissioned the Plaintiffs to write a script on behalf of Shri Prakash Mehra based on the said story.

38. Mr. Khambata submitted that, from the material on record it further appears that: (i) having bought the story, Shri Dharmendra in turn sold it to Shri Prakash Mehra for Rs. 4,000/- (Affidavit of Ramesh Ningoo page 150 at page 153-154) since Shri Dharmendra had no time to do a film with Shri Prakash Mehra; (ii) Shri Prakash Mehra ratified this commissioning and paid a further Rs. 55,000/- to the Plaintiffs for preparing a script; and (iii) Shri Prakash Mehra also contributed to the screenplay by making changes to the script, a fact not denied by the Plaintiffs.

39. Mr. Khambata further took me through the interview of Plaintiff No. 1 to ETC Networks (a popular Bollywood Trade Channel) dated October 7, 2010, the interview of Plaintiff No. 1 in Screen Magazine on April 13-19, 2012, the interview of Shri Prakash Mehra published on 19th May, 1998, the Affidavit of Shri Ramesh Ningoo, the Assessment Order in respect of the Assessment Year 1974-75, and submitted that the same makes it clear that the contract between the Plaintiffs with Shri Prakash Mehra was nothing but that of a commission of work qualifying as a contract of service for the purpose of Section 17 (b) of the Act.

40. Mr. Khambata further submitted on behalf of Defendant No. 6 that it is an admitted position of law that an idea or a story by itself has no copyright, particularly if it is not reduced to writing or some tangible form. It is not the

Plaintiffs' case that the story or the idea of the story of the original film "Zanjeer" was in a tangible form. The story was sold to Shri Dharmendra, who thereafter sold the same to Shri Prakash Mehra. Shri Prakash Mehra being the Commissioner of the literary and/or dramatic work of the original film "Zanjeer", rightfully owned the copyright of the said work. The Plaintiffs were commissioned to write the script (the said work) and have no copyright whatsoever in it. The Plaintiffs had a story and parted with it to Shri Dharmendra contractually for consideration. Thereafter the Plaintiff worked on the story to make it into a script at the instance of Shri Prakash Mehra. Mr. Khambata submitted that of course these issues will be finally decided at the trial when the Defendants will have the opportunity of cross-examining the Plaintiffs and other deponents who have given affidavits in favour of the Plaintiffs, should they choose to step into the box.

41. Relying on the decisions in (i) *Eastern Motion Pictures and Ors. vs. Performing Rights Society Ltd. and others* (supra) (Paragraphs 16 and 17); (ii) *Indian Performing Right Society Ltd. vs. Eastern Indian Motion Pictures Association and others* (supra) (Paragraph 17); and (iii) *Gee Pee Films Pvt. Ltd. vs. Pratik Chowdhary and others*⁹ (Paragraph 16), Mr. Khambata submitted that the rights of an author of a literary work such as a script utilized in a cinematograph film under the Act prior to the 2012 amendment are and as the

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Act was in 1971 as follows:

- (i) The copyright in a cinematograph film (Section 13 (1) (b) of the Act) is separate and independent from the copyright in the underlying literary, dramatic, musical or artistic works (Section 13 (1) (a) of the Act (IPRS Para 15);
- (ii) After the Script (the underlying literary work in the film) gets incorporated in a cinematograph film, the right under Section 14 (1) (a) (v) of the Act is exhausted (i.e. the right “to make any cinematograph film or a record in respect of the work”). Only the independent copyright in the underlying work, other than the right to incorporate it in the cinematograph film, remains (IPRS Para 15);
- (iii) These “remaining rights” are those set out in Section 14 (1) (a) (I – (iii) and (vi) – (viii) of the Act. These remaining rights could be for example the right to use the script in a play or in a book (but not in another cinematograph film);
- (iv) It must be pointed out that in *Music Broadcast Pvt. Ltd. vs. Indian Performing Right Society Ltd.* (supra) (“Music Broadcast”), S.J. Vazifdar, J. held that the provisions of Section 14 (1) (a) (iv) (the provision corresponding to Section 14 (1) (a) (v) as it existed in 1971-72) entitled the author of the underlying work to make another independent sound recording albeit not to use the original sound recording (Paras 36, 38 and 39 (B));
- (v) However even assuming that the *Music Broadcast* finding prevails viz.

that the composer has the right to make a new sound recording from the same song (or making a new film from the same script) these rights too can be “defeated” if the requirements of Section 17 (b) or (c) are satisfied;

(vi) Once a cinematograph film is made the underlying work gets subsumed in the film, the remaining and independent rights of the author of the underlying work (referred to in Section 14 (1) (a) (I) – (iii) and (vi) – (viii) and in *Music Broadcast* even (iv) partially), can be taken away or “defeated” by the producer of a cinematograph film only in the manner laid down by Section 17 (b) or (c) i.e. if the composer or author was commissioned for value (contract for service”) or employed under a contract of service, to compose/write the work (IPRS Paras 17 and 21);

(vii) There is no conflict (seeming or otherwise) between the judgments of Justice Jaswant Singh (Paras 16-17) and Justice Krishna Iyer (Paras 20-21), nor is the judgment of Justice Jaswant Singh “clarified” by the judgment of Justice Krishna Iyer as sought to be argued in rejoinder on behalf of the Plaintiffs;

(viii) Para 17 of Justice Jaswant Singh's judgment lays down how a composer/author can be completely denuded of his rights if the requirements of Section 17 (b) or (c) are met. That is also exactly what Justice Krishna Iyer says in Para 21 when he refers to Section 17 (c).

42. Mr. Khambata further submitted that the amendment to Section 17 on

21st June, 2012, by addition of a proviso puts the matter beyond doubt. The proviso reads thus:

“Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of Section 13”.

He submitted that in other words the independent rights of an author/composer under Section 13 (1) (a) now cannot be taken away even by contracts under Section 17 (b) or (c). Mr. Khambata further submitted that:

- (i) The proviso sought to “give independent rights to authors of literary and musical works in cinematograph films” as stated in Para 3 (viii) of the Objects and Reasons to the Bill, which became Amendment Act 27 of 2012;
- (ii) In para 19 of *IPRS*, Justice Krishna Iyer voiced a need “for legislative exploration to protect a category now left in the cold” viz. The author/composer whose rights would be extinguished by Section 17 (b) or (c). The proviso was added to negate the effect of the *IPRS* judgment;
- (iii) This is borne out by Paras 9.13, 9.14 and 9.16 of the 227th Report on the Copyright (Amendment) Bill 2010 presented to the Rajya Sabha on 23rd November, 2010;
- (iv) Prior to the addition of the proviso in 2012, therefore the rights of the author/composer were lost if the conditions of 17 (b) or (c) were satisfied; post 2012 amendment notwithstanding Section 17 (b) or (c) the rights of the

author/composer in the underlying literary, artistic, musical or dramatic work (provided for in Section 13 (1) (a) were saved;

(v) Clearly the 2012 amendment will operate prospectively and cannot operate to resurrect rights of ownership/copyright that had been extinguished prior to 21-6-2012, the date on which the proviso was added.

43. Mr. Khambata submitted that the Plaintiffs have argued that the copyright of underlying work for a cinematograph film and the copyright in the cinematograph film are two separate copyrights and the underlying work gets subsumed only for the purpose of that particular cinematograph film. But this is contrary to the *IPRS* judgment and does not reflect the pre-2012 amendment position. In fact authors of the underlying work lose all their rights of authorship, as held in *IPRS* and *Gee Pee Films* (supra).

44. Mr. Khambata further submitted that Section 19 of the Act has no application in this case since it is the case of the Defendants in the present suit that the contract between the Plaintiffs with Shri Prakash Mehra was nothing but that of commission of contract qualifying as a contract of service for the purpose of Section 17 (b) of the Act. Mr. Khambata further submitted that it is the Plaintiffs' case that only a one time permission was granted to Shri Prakash Mehra with respect to the rights in the story, screenplay, script and dialogues of the original film "Zanjeer" and there had been no assignment of

any rights whatsoever. It is submitted that such one time permission is nothing but a license by the owner of copyright, which is governed by Section 30 of the Act. Such license has to be in writing.

45. Mr. Khambata submitted that the reliance by the Plaintiffs on a passage from the copyright Act (7th Edition – T.R. Srinivasa Iyengar) is misconceived. The commentary refers to an old English case *Cooper vs. Stephens*¹⁰ to state that a permission for the mere doing of an act may be given orally or by implication. However, under English law there is no requirement that a licence of copyrightable material must be in writing or comply with some formality. [*Copinger and Skone James on Copyright (15th Edition) Paras 5-195 (Page 298)*]. *Cooper vs. Stephens* obviously can have no application under Section 30 of the Act. There is also no ground for restricting the ordinary meaning of the word 'licence' to only a right that confers an interest.

46. Mr. Khambata further submitted that it is of utmost importance that the Plaintiffs have, as far back as in January 9, 2013, quantified their claim to the tune of Rs. 6 crores and have thus admitted that, damages is a sufficient remedy for the infringement of their rights, if any. Mr. Khambata also submitted that the Plaintiffs' case is contrived. Despite various press releases regarding the remake of the film "Zanjeer" since November, 2012, the

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Plaintiffs have after serving a notice on the Defendant Nos. 3 and 4 dated 16th April, 2012, sent a letter of complaint to FWA on 9th January, 2013, i.e. after a period of 9 months. In fact, Plaintiff No.2 without asserting rights, as can be seen from the news article published in Hindustan Times on November 3, 2012 stated "*Are they really making it?; I don't see any harm in it. But I only hope they will make it well*".

47. Mr. Khambata submitted that in the light of his submissions, it is clear that the present Suit is nothing but an opportunist move on the part of the Plaintiffs. The equities of the case clearly lie in favour of the Defendants. Mr. Khambata therefore submitted that the Notice of Motion be dismissed with costs.

48. I have considered the aforesaid submissions advanced on behalf of the Plaintiffs and the Defendants. The Plaintiffs have filed the above Suit on 1st April, 2013. They have approached the Court with a case that some time in or about 1971/72, they were approached by Shri Prakash Mehra who informed them that he was desirous of producing and directing a Hindi feature film and enquired if any exceptional and fresh story was written by them. The Plaintiffs thereafter narrated the story and shared with Shri Prakash Mehra, the bound script comprising of screenplay and dialogues written by them of the aforesaid story, which the said Shri Prakash Mehra liked

immediately. He showed keen interest in making the said film "Zanjeer" on the story (script) written by the Plaintiffs. The Plaintiffs therefore submitted in the Plaint that as the authors and owners of the story, screenplay and dialogues of the said film, which are the original literary work and/or dramatic works, they are the "first owners of the copyright" therein, under the provisions of the Act and that they had permitted /authorized the said Shri Prakash Mehra and his Prakash Mehra Productions to use the said story so authorized by them to make/produce the said feature film "Zanjeer".

49. The Plaintiffs have not produced any bound script comprising of the said story, screenplay and dialogues and on a specific query raised by the Court as to whether the said bound script/literary work was available with them in tangible form, the learned Senior Advocate appearing for the Plaintiffs, after taking instructions, informed the Court that they are not in possession of the bound script/literary work of the said film "Zanjeer" of which they claim to be the "first owners of the copyright".

50. The Defendants have submitted that the Plaintiffs have approached the Court with an incorrect case viz. that Shri Prakash Mehra approached the Plaintiffs and informed them that he was desirous of producing and directing a Hindi feature film and enquired if they had any exceptional and fresh story written by them and they narrated the story to Mr. Prakash Mehra and shared

with him the bound script comprising of screenplay and dialogues written by them. In fact, Defendant Nos. 1 and 2 in their first affidavit dated 16th April, 2013, itself filed within ten days from the service of the papers and proceedings in the above Suit, stated on oath (Paragraph 16 of the affidavit-in-reply) that the story of the film "Zanjeer" was purchased by their father Shri Prakash Mehra from the very well-known and popular actor/hero Shri Dharmendra, who was initially to play the lead role in the film "Zanjeer". When Shri Dharmendra opted out of the said project citing some constraints, Shri Prakash Mehra who now owned the script hired the Plaintiffs for valuable consideration and continued with the project. Once the film was made, the script and the screenplay got subsumed into the film. Thereupon, it was only Shri Prakash Mehra who as the Producer was the author of the film and also had the rights to remake the film. Defendant Nos. 1 and 2 also pointed out that in an interview to ETC Networks dated 4th October, 2010, Plaintiff No.1 himself has stated that the story of the film "Zanjeer" was sold by him to Shri Dharmendra, when Shri Javed Akhtar (Plaintiff No.2) was not even his Partner. So much for the joint authorship claimed by the Plaintiffs in the Plaint. Defendant Nos. 1 and 2 in their affidavit dated 22nd April, 2013, also pointed out that Shri Prakash Mehra himself during his life time in an interview to the Journalist Mr. Syed Firdaus Ashraf in the year 1998 stated that the film was bought over by Shri Dharmendra from the writers Salim-Javed. Defendant Nos. 1 and 2 further pointed out that once again Plaintiff No. 1 as late as in

April, 2012 (i.e. at the time when the legal notice was served by the Advocates for the Plaintiffs on the Defendant Nos. 3 and 4) confirmed that Shri Dharmendra paid him Rs. 2,500/- for the story of "Zanjeer" which was later bought over by Shri Prakash Mehra.

51. Plaintiff No. 1 who was conscious of the fact that he had repeatedly stated in the past that he had sold the story of the film "Zanjeer" to Shri Dharmendra, and the same was thereafter bought over by Shri Prakash Mehra, in response, for the first time in his affidavit-in-rejoinder dated 24th April, 2013, stated that he had an idea of a story in which the protagonist would be an angry young man who is a police officer who has nightmares that he is chained and feeling of being helpless and trapped. He had narrated the story idea which was in the form of a broad outline story for a film to Shri Dharmendra, who liked the idea and suggested that Plaintiff No. 1 should develop the complete script. Shri Dharmendra expressed his interest in acting in the film which would be based on the said idea. Shri Dharmendra also suggested that Plaintiff No.1 should offer the complete script as and when made to Shri Prakash Mehra with whom the said Dharmendra was committed to do a film. Further, as per his customary habit and showing appreciation of the idea which appealed to him, he gave Plaintiff No. 1 a good luck amount of Rs. 2,500/- (shagun). Thereafter Plaintiff No.2 partnered with Plaintiff No.1 and they developed the said idea into a complete script which they narrated to

Shri Prakash Mehra who liked the said script and agreed to make the said film as per the said script. They again narrated the complete script to Shri Dharmendra and he liked the same. In support of this explanation, a letter dated 23rd April, 2013, was written by Shri Dharmendra Deol to the President of FWICE, Mumbai, which is in conformity with the stand now taken by the Plaintiffs.

52. From the aforesaid facts, I am satisfied that on 1st April, 2013, the Plaintiffs have approached the Court with an incorrect case that in the year 1971/72 they were approached by Shri Prakash Mehra who informed them that he was desirous of producing and directing a Hindi feature film and enquired if they had written any exceptional and fresh story, and that thereupon the Plaintiffs narrated the story and shared the bound script comprising of screenplay and dialogues written by them of the said story with Shri Prakash Mehra, who immediately liked it and showed keen interest in making the said film "Zanjeer" on the script written by the Plaintiffs. Upon being pointed out by Defendant Nos. 1 and 2 as stated hereinabove in their affidavit-in-reply that Shri Dharmendra had in fact purchased the story of the film "Zanjeer", the case of the Plaintiffs immediately took a twist at least to the extent that Shri Dharmendra had asked the Plaintiff No.1 that he should offer the complete script as and when made to Shri Prakash Mehra with whom the said Dharmendra was committed to do a film and that Shri

Dharmendra had already suggested to Shri Prakash Mehra that he should take the script based on the story idea narrated to him by Plaintiff No.1 and also requested the Plaintiffs to give a hard bound script to Shri Prakash Mehra which they did in due course. This belies the initial story of the Plaintiffs in paragraph 3.2 of the Plaint that Shri Prakash Mehra had approached them in 1971/72 and enquired from them if they had written any exceptional and fresh story, since he was desirous of producing and directing a Hindi feature film in response to which they handed over to him a bound script. In view thereof, I am satisfied that the Plaintiffs had to substantiate their incorrect case of handing over a bound script to Shri Prakash Mehra and have thus procured the affidavit from one Shri Rakesh Sharma, Chief Assistant Director to Shri Prakash Mehra, stating that Shri Prakash Mehra had told him in early 1972 that for the first time he had not only heard the narration of a complete script but also received a complete fully written and hard bound script from the Plaintiffs and that Shri Prakash Mehra was so confident of this script that he completed the film "Zanjeer" without making any change whatsoever in the original written script. I have therefore not taken cognizance of the said affidavit at least at this interim stage.

53. The Defendants have submitted that Shri Dharmendra had purchased the story idea from Plaintiff No.1 and it is only after Shri Prakash Mehra realized that Dharmendra will not get time to do the film "Zanjeer", that Shri

Prakash Mehra bought over the story idea from Dharmendra and commissioned the Plaintiffs to write the script for the film "Zanjeer" upon payment of consideration. It is contended by Defendant Nos. 1 and 2 that the Plaintiffs have through FWICE obtained a letter from Shri Dharmendra dated 23rd April, 2013, that they required for the purpose of getting out of the aforestated truth exposed by Defendant Nos. 1 and 2. In support of their case that Shri Dharmendra had purchased the story idea of "Zanjeer" from the Plaintiff No.1 for consideration, which was in turn bought by Shri Prakash Mehra through Shri Dharmendra, and Shri Prakash Mehra thereafter hired the services of the Plaintiffs to write the script of "Zanjeer" for consideration, the Defendant Nos. 1 and 2 have correctly relied on the following:

(I) Interview of Shri Prakash Mehra on "Rediff On The Net" dated 19th May, 1998.

The late Shri Prakash Mehra in his interview published on "Rediff on the Net" dated 19th May, 1998 (when none of the present disputes existed) has stated that "*Zanjeer, actually, wasn't my film. The film was bought over by Dharmendra from the writers Salim-Javed. Dharmendra had already paid the initial amount for the film and he was to play the hero.... I told him not to delay things, but Dharam said he was helpless. But I didn't find it fun waiting so long. One fine day, both of us amicably settled the matter with Dharam agreeing not to work in the film because of his busy schedule.*" Interestingly, the Plaintiffs have contended that no reliance can be placed on

the purported interview particularly when the said Shri Dharmendra has now categorically clarified the matter in his letter dated 23rd April, 2013. It is also argued that in the said interview, Shri Prakash Mehra does not anywhere state that he has purchased the rights of the said story from Shri Dharmendra. However, in my view, the Plaintiffs forget that the said Shri Prakash Mehra in the year 1998 when there were no disputes between the parties, had categorically stated that *“the film was bought over by Dharmendra from the writers Salim-Javed.... Dharmendra had already paid the initial amount for the film and he was to play the hero....But I didn't find it fun waiting so long. One fine day, both of us amicably settled the matter with Dharam agreeing not to work in the film because of his busy schedule”*.

(II) Interview of Plaintiff No.1 – Shri Salim Khan to ETC Networks dated 4th October, 2010:

Plaintiff No.1 – Shri Salim Khan in his ETC Interview dated 4th October, 2010, states *“Javed wasn't even my partner when I sold Zanjeer..... He became my Partner later. I had already sold that story to Dharmendra. I had taken twenty five hundred rupees already”*.

The entire interview of Shri Salim Khan on ETC Networks is of about 45-60 minutes. However, the relevant portion of the same was played before me in Court. I have noted that Shri Salim Khan is in a relaxed mood whilst speaking to the Interviewer and the explanation now given by Shri Salim Khan in his

affidavit dated 24th April, 2013, that it was a television interview and there was no time to explain and/or elaborate or give a detailed statement of the facts that transpired at the relevant time and therefore the statement made was not a complete statement is totally incorrect and unacceptable. What this Court finds shocking is that despite Shri Salim Khan in his interview having categorically stated "*I had already sold that story to Dharmendra. I had taken 2500/- Rs. already*", he has in his affidavit stated that "*I had said in the said interview that the said story was initially given by me to the said Dharmendra. What I meant by "Given by me" was that I agreed that the said story would be earmarked for the said Dharmendra to act in it.*" Since I am sure that the Plaintiff No.1 knows the exact difference between "I had already sold that story" and the words "given by me", I am satisfied that the Plaintiff No.1 does not at all hesitate in making incorrect statements and/or giving explanations on oath which on the face of it are incorrect. As regards his statement in the interview to ETC Networks that the Plaintiff No.2 – Shri Javed Akhtar later became his partner and that he had already sold the story to Shri Dharmendra, Plaintiff No.1 has stated in his affidavit that at the time of the interview he had some disputes and differences with Plaintiff No.2. Further what was meant by him in the said interview was that before Plaintiff No.2 joined him, he had conceptualized and visualized a story and created a broad outline story for a film based on the said idea and narrated the same to the said Shri Dharmendra Shri Dharmendra after expressing his interest in the

same, he gave him a small good luck amount (shagun) for such a fresh and exceptional idea/story. This again shows that after categorically stating in the interview that he had already sold the story to Shri Dharmendra and had taken Rs. 2500/- from Shri Dharmendra, he is now once again incorrectly contending on oath that the said Rs. 2,500/- was only a small good luck shagun, which contention certainly cannot be accepted.

(III) News article published in Hindustan Times dated 3rd November, 2011:

In the said news article, Plaintiff No. 2 responding to the news of the remake of "Zanjeer" stated that "*Are they really making it? I don't see any harm in it. But I only hope they make it well*". Interestingly after denying in his Affidavit that such an interview was given, the Plaintiff No.2 has attempted to explain a statement which he claims to have never made, by contending that the statement is not a permission or license to go ahead with the film. In the news article, the quote of Plaintiff No.2 is clearly and prominently printed in a box with the photograph of Plaintiff No.2. The Plaintiff No. 2 has also not produced any communication to the newspaper stating that he has been misquoted or quoted incorrectly.

(IV) Interview of Plaintiff No. 1 – Shri Salim Khan in SCREEN Magazine dated April 13-19, 2012:

The Plaintiff No.1 has in his interview in Screen Magazine dated April 13-

19, 2012 (Legal notice of the Plaintiffs' Advocates to Defendant Nos. 3 and 4 is dated 16th April, 2012) after recalling his meeting with Shri Dilip Kumar at Mumbai's Bandra Gymkhana to narrate the story idea and stating that Shri Dilip Kumar did not cherish the idea of a psychologically disturbed and taciturn cop and thought that it was too mono-dimensional, stated that the next stop was Shri Dharmendra, who was thrilled with the story and **paid Plaintiff No.1 Rs. 2500/- as a token signing amount.** But somehow Shri Dharmendra had second thoughts and **Shri Prakash Mehra** (whom he wanted the movie to be directed by) **bought the story** and turned producer. In the said interview it is also stated that the Plaintiffs were paid Rs. 55,000/- each for the film. When the said interview was placed on Affidavit by Defendant Nos. 1 and 2, though Plaintiff No.1 filed his further affidavit dated 17th June, 2013, the fact that the Plaintiff No.1 gave such an interview and what the interviewer has attributed to Plaintiff No.1, is not dealt with and/or denied by the Plaintiff No.1.

54. Thus the Plaintiff No.1 has repeatedly stated since the year 2010 that he had sold the story idea of the film "Zanjeer" to Shri Dharmendra for Rs. 2500/-; that Shri Dharmendra not being able to act in the movie, the story was bought over by Shri Prakash Mehra; and that Shri Prakash Mehra paid them consideration of Rs. 55,000/-. In fact, as stated hereinabove, these facts have been narrated/confirmed by the late Shri Prakash Mehra in the year

1998 when there were no disputes between the parties. All the above facts were not mentioned in the Plaint but instead the Plaintiffs approached the Court with the incorrect case set out in paragraph 5 above. When the Plaintiffs were faced with the above facts narrated in the Affidavits filed by Defendant Nos. 1 and 2, the Plaintiffs being left with no alternative, purportedly wrote a letter dated 17th April, 2013 to the President of FWICE “requesting him to use his good offices with the said Shri Dharmendra and find out what could have been the basis of such misinformation”. It is alleged that pursuant thereto, the President of FWICE wrote to Shri Dharmendra on 22nd April, 2013, to give his comments on the same and Shri Dharmendra then responded by his letter dated 23rd April, 2013 which as submitted by Defendant Nos. 1 and 2 states what the Plaintiffs wanted him to say. The FWICE on 12th March, 2013, had held a meeting between the parties for 90 minutes. The discussion which took place at the said meeting held on 12th March, 2013, is set out in the minutes annexed at Exhibit-J to the Plaint. In the said minutes, there is no mention of Shri Dharmendra. In fact, in the final paragraph of the said minutes, FWICE has already given its finding as follows:

“1. Since the case is under judicial consideration we should wait for the decision of the Court in respect of the rightful owner, which is expected on the 25th March 2013 as the date is for hearing and final disposal.

2. In view of the documents submitted by Shri Salim Javed to FWICE, the Dispute Settlement Committee Members of FWICE

are of a unanimous opinion that Salim Javed are the rightful owners. Also because the members have not seen the evidential documents the other party claims to hold.”

From the pleadings of the parties, it appears that there were no proceedings fixed before the FWICE thereafter. Despite that, the Plaintiffs allegedly wrote to the President of FWICE on 17th April, 2013 (after filing the present Suit on 1st April, 2013) and sought an explanation from Shri Dharmendra to which he responded by his letter dated 23rd April, 2013. Interestingly, the letter written by the Plaintiffs dated 17th April, 2013 to the President of FWICE is not produced before this Court. The letter dated 22nd April, 2013 written by the President of FWICE to Shri Dharmendra is also not produced before this Court. From a reading of the letter written by Shri Dharmendra, I am prima facie satisfied that the said letter is procured by the Plaintiffs from the said Shri Dharmendra only to use the same in the present proceedings in order to deal with the problems faced by the Plaintiffs in answering the facts placed before the Court by the Defendant Nos. 1 and 2 inter alia that the story idea was purchased by Shri Dharmendra for Rs. 2500/- and thereafter by Shri Prakash Mehra from Shri Dharmendra as admitted by the Plaintiff No.1 as well as late Shri Prakash Mehra in the manner set out hereinabove. It is only to lend some credibility to the stand taken by the Plaintiffs that the said Shri Dharmendra is made to write a letter to the President of FWICE in response to a purported letter written by the said President to Shri Dharmendra which, as stated

hereinabove, is not produced before this Court. Therefore, in my view, no credence can be given to the letter of Shri Dharmendra at least at this prima facie stage and the Defendants ought to have an opportunity to cross-examine Shri Dharmendra at the time of the trial in the above Suit.

55. The Plaintiffs in support of their allegation that they are the owners of the said literary work and the rights of the said Shri Prakash Mehra were restricted only to making the cinematograph film "Zanjeer" and the said Shri Prakash Mehra has no right in the literary work of the Plaintiffs, in their Advocates' first notice dated 16th April, 2012 addressed to the Defendant No.3 and Prakash Mehra Productions inter alia alleged in paragraph 4 that the Plaintiffs have independently licensed the remake of the said film in the past and that specifically the Plaintiffs have licensed the remake of the said film for use in a film in Tamil language titled "Sirithu Vazha Vendum", released in 1974 under license to the Tamil Production Company, M/s. Udhayan Productions, a fact that is in the knowledge of the entire film industry. Thus, by the said notice, the Plaintiffs gave an impression that the Plaintiffs have licensed the remake of the said film "Sirithu Vazha Vendum" to M/s. Udhayan Productions. No mention is made about general rights of all South Indian Films under an Agreement for a period of 25 years. However, in paragraph 3.7 of the Plaint, the Plaintiffs have alleged that sometime in the year 1973, they licensed the "remake rights" of the said story of the film "Zanjeer" in

respect of all South Indian languages in favour of Mr. S.V.S. Manian, Partner of M/s Udhayan Productions for a period of 25 years. The said M/s. Udhayan Productions, based on the remake rights so specifically granted, then produced the Tamil film "Sirithu Vazha Vendum" starring MGR and others which was also a huge success. It is alleged that the license of the rights in the said story to M /s. Udhayan Productions for all South Indian languages was well-known to Shri Prakash Mehra and he never raised any claims in the story, screenplay and dialogues of the said film. The Plaintiffs now produced an affidavit of the wife of Shri S.V.S. Manian dated 31st December, 2012, confirming that her husband had bought the story rights in the Hindi film "Zanjeer" from the Plaintiffs for a period of 25 years for the making of the Tamil film "Sirithu Vazha Vendum". Interestingly, no such license document has been either produced by the Plaintiffs or the wife of Shri Manian. Neither the Plaintiffs nor the wife of Shri Manian have even attempted to mention whether there was any consideration paid by Shri Manian for the alleged rights given for 25 years by the Plaintiffs. In view of the demise of Shri Prakash Mehra as far back as in 2009, it now very easy to allege that Shri Prakash Mehra was aware of the license of the rights to M/s. Udhayan Productions.

56. The allegations as regards permitting remake rights in favour of Shri Manian of M/s. Udhayan Productions, the same are denied by the legal heirs

of the Defendants. In fact, they have pointed out that Shri Prakash Mehra had allowed Hem-nag Productions to remake the Hindi film “Zanjeer” in Malayalam titled “Naayattu” starring Prem Nazir, Jayan, Zareena Wahab and Adoor Basi and directed by Srikumaran Thambi. A letter dated 24th April, 2012 to this effect is issued by Hem-Nag Productions in response to the information sought by the Defendant No.6, also by its letter dated 24th April, 2012, confirming that their production house purchased the Malayalam remake rights of “Zanjeer” including the script rights, screenplay rights, rights in the literary work and all other underlying copyrights in the original Hindi film from Shri Prakash Mehra himself. Even in this letter, there is no mention made about the amount of consideration fixed for the remake of the said film “Zanjeer” in Malayalam language and no document allowing the remake of the said film is produced. In response, the Plaintiffs have produced an affidavit of Shri L. Suresh claiming to be associated with the South Indian Film Industry since 1968, the former President of the Film Federation of India and the current Secretary of the South Indian film Chamber of Commerce, stating that he was the financier and distributor of the Tamil language film titled “Sirithu Vazha Vendum”. He has further stated that on 9th November, 1978, M/s. Udhayan Productions transferred the negative rights of the said Tamil language film titled “Sirithu Vazha Vendum” to Mrs. Sujata Ventakeswaran and on 16th July, 1979 the said Mrs. Sujata Venkateswaran transferred the same rights to M/s. Ananda Pictures Circuit of which he is the

Proprietor. He has stated that in 1978-79, he was approached by Shri S.V.S. Manian and Mr. V. Laxmanan to ask permission to allow the Malayalam rights of the film "Zanjeer" to be given to Shri Prakash Mehra and that he consented that M/s. Udhayan Productions can grant the remake rights of the Hindi film "Zanjeer" in Malayalam language to Shri Prakash Mehra. According to him, Mr. Manian thereafter telephoned Shri Prakash Mehra and agreed to authorize the remake rights of the Malayalam language film based on the script and screenplay of the Hindi film "Zanjeer". Again, no document is produced in support of the statement that M/s. Udhayan Productions has transferred the negative rights to Mrs. Sujata Venkateswaran who thereafter transferred the same to the sole proprietary concern of the deponent through L. Suresh. There is no written agreement to show that Shri Prakash Mehra was granted permission by Shri Manian to make the film in Malayalam film. In view thereof, no cognizance can be taken of these affidavits/letters relied on by the parties qua the remake rights, as the parties will have to establish these facts only by leading evidence and producing the deponents for cross-examination by the other side.

57. Defendant Nos. 1 and 2 in support of their contention that Shri Prakash Mehra after purchasing the story idea from Shri Dharmendra, commissioned the services of the Plaintiffs for consideration, have produced the affidavit of Mr. Ramesh Maganlal Ningoo, who joined Prakash Mehra Productions as an

Accountant in or around August, 1972, initially on a part time basis and thereafter on a full time basis. He has deposed that as part of his duties he was handling entries in the cash book, ledger and journal books of Prakash Mehra Productions. He has further stated that for this purpose he had to interact daily with Shri Prakash Mehra who then was starting work on producing and directing a new film. He deposed that in August 1972, he came across a payment of Rs. 4,000/- by cheque to Shri Dharmendra in the books of account of Prakash Mehra Productions. He therefore asked Shri Prakash Mehra what the payment was for, as Shri Dharmendra was not part of the star cast of the film "Zanjeer" which was launched by Prakash Mehra Productions in or around May, 1972. He has further stated that Shri Prakash Mehra told him to transfer the entry of Rs. 4000/- from Shri Dharmendra's ledger account in the books of Prakash Mehra Productions into the "Story and Screenplay" ledger account for the film "Zanjeer" as the said story was sold by Shri Salim Khan and Shri Javed Akhtar to Shri Dharmendra who had liked it after hearing the story and had purchased it from them for a token amount of Rs. 4,000/-. The deponent has further stated that he accordingly transferred the said amount of Rs. 4,000/- from Shri Dharmendra's ledger account to the "Story and Screenplay" ledger account of the film "Zanjeer" along with other payments. Mr. Ningoo has further stated that Shri Prakash Mehra had hired the Plaintiffs – Shri Salim Khan and Shri Javed Akhtar to develop the story/screenplay dialogues. Thereafter the ledger account of the writers Shri

Salim Khan and Shri Javed Akhtar in the books of accounts of Prakash Mehra Productions reflected various payments to the writers Shri Salim Khan and Shri Javed Akhtar, which was merged with the "story and Screenplay" account, and became part of the total cost of production of the film "Zanjeer" in the books of Prakash Mehra Productions. Shri Ningoo has stated that the entire accounts of Prakash Mehra Productions for the film "Zanjeer" were handled by him along with one Mr. Thakur and he also recollects that Mr. Amitabh Bachchan was paid a total sum of Rs. 60,000/- approximately by Prakash Mehra Productions for his role as the lead male star of the film. The deponent has further stated that he attended the Income tax office for the Assessment Year 1974-75 of Prakash Mehra Productions and since "Zanjeer" was the only film produced and released by Prakash Mehra Productions during that period, the entire payments and expenses for which the returns of Income Tax were filed by Prakash Mehra Productions for that period were in respect of "Zanjeer" only. Shri Ningoo has also stated that during the shooting of "Zanjeer" he attended the sets several times to meet Shri Prakash Mehra and take instructions and signatures on cheques from him. Shri Prakash Mehra has therefore also mentioned the name of the deponent in the titles of the film "Zanjeer" as a mark of appreciation for his services. Thereafter Defendant No.2 has in his supplementary affidavit dated 11th June, 2011, also annexed the Assessment Order passed by the 6th Income Tax Officer dated 27th May, 1976 in respect of the Assessment Year 1974-75

which inter alia shows that Shri T.C. Mehta, Chartered Accountant along with Shri Ningoo, Accountant of Prakash Mehra Productions had from time to time with the books of account consisting of cash book, ledger, journal, bank statements, etc. attended the hearings before the Income Tax authorities. The said order sets out the details of receipt from the picture "Zanjeer" and details various heads of expenditure including payment to artists, music expenses, publicity expenses etc. The cost of the picture was Rs. 44,18,955/- In the break up of the said costs, the amount paid towards story and screenplay is shown as Rs. 59,616.93. The photostat copy of the profit and loss account as on 31st March, 1974 signed by Shri Prakash Mehra himself is also produced on oath.

58. From the aforesaid facts and the statements made by the Plaintiff No.1 – Shri Salim Khan and Shri Prakash Mehra, it is prima facie clear that the Plaintiffs have approached this Court with an incorrect case namely that some time in or about 1971/72, they were approached by Shri Prakash Mehra who informed them that he was desirous of producing and directing a Hindi feature film and enquired if they had written any exceptional and fresh story and that the Plaintiffs thereafter narrated the story and shared with Shri Prakash Mehra the bound script comprising of the screenplay and dialogues written by them of the aforesaid story, which Shri Prakash Mehra immediately liked. Upon Defendant Nos. 1 and 2 pointing out that according to the Plaintiff No.1

himself, the story was sold to Shri Dharmendra, the Plaintiffs dramatically changed their case in rejoinder and alleged that the story idea was liked by Shri Dharmendra and that the payment of Rs. 2,500/- was paid by him to Plaintiff No.1 as shagun and that Shri Dharmendra had suggested that the Plaintiffs should offer the complete script as and when made to Shri Prakash Mehra with whom the said Dharmendra was committed to do a film. Thereafter the Plaintiffs narrated the complete script to Shri Prakash Mehra who liked the script and agreed to make the said film (Paras 5 and 6 of the affidavit-in-rejoinder of Plaintiff No.1 at page 138). Having therefore established that the Plaintiffs have not approached the Court with the correct facts, on this ground itself the Plaintiffs are not entitled to any interim reliefs from this Court. In any event, it is stated by the Plaintiff No.1 – Shri Salim Khan himself, as late as in April, 2012 i.e. at the time of or after the legal notice was issued on behalf of the Plaintiffs to Defendant Nos. 3 and 4, that after Shri Dilip Kumar did not approve the story, the next stop was Shri Dharmendra who was thrilled with the story and paid the Plaintiff No. 1 Rs. 2500/- as a **token signing amount**. Since Shri Dharmendra had second thoughts, Shri Prakash Mehra brought the story and turned Producer for which the Plaintiffs were paid Rs. 55,000/-. This fact is also supported by Shri Prakash Mehra as early as in the year 1998 when there was no dispute between the parties, that the film was bought over by Shri Dharmendra from the Plaintiffs and Shri Dharmendra had already paid the **initial amount** for

the film. But since Shri Dharmendra wanted Shri Prakash Mehra to wait for a long time to enable him to act in the film, one fine day they both amicably settled the matter with Dharmendra agreeing not to work in the film because of his busy schedule. These statements made by the Plaintiff No. 1 and the late Shri Prakash Mehra also find substantial support from the facts narrated by Shri Ningoo who has stated that an amount of Rs. 4,000/- was paid by Shri Prakash Mehra to Shri Dharmendra and the services of the Plaintiffs were hired/commissioned by Shri Prakash Mehra and that in the breakup of the costs, the amount paid towards story and screenplay is shown as Rs. 59,616.93. The assessment order of the relevant year along with the profit and loss account and the breakup of the costs of the Picture is also produced. The assessment order shows that Mr. Ningoo throughout appeared before the Assessing Officer with the Chartered Accountant of Shri Prakash Mehra along with all the necessary cash book, ledger, journal, bank statements, etc. The name of Shri Ningoo is also mentioned in the titles of the film "Zanjeer" as a mark of appreciation for his services. In view thereof, at least at this prima facie stage the facts narrated by Shri Ningoo appear to be authentic and there is no ground to disbelieve the statements made by him on oath. All these factors in my view at least prima facie suggest that the story idea of the film "Zanjeer" was initially purchased by Shri Dharmendra for consideration and thereafter as Shri Dharmendra was unable to act in the film, Shri Prakash Mehra paid/reimbursed Shri Dharmendra and commissioned the services of

the Plaintiffs to finalize/complete the script/story/screenplay/dialogues of the film "Zanjeer" for which the Plaintiffs have from time to time received consideration from Shri Prakash Mehra aggregating to approximately Rs. 55,000/-. Since the only relief sought by the Plaintiffs in the Plaint as well as the Notice of Motion is to restrain the Defendants from infringing their alleged copyright in the story/script/screenplay and dialogues of the film "Zanjeer" i.e. in other words, to restrain the Defendants from remaking/releasing the film "Zanjeer" scheduled to be released on 6th September, 2013, the same cannot be granted for the aforesaid reasons. The balance of convenience is also in favour of the Defendants.

59. In view of the above prima facie finding reached by this Court, the present case is squarely covered by the ratio of the Hon'ble Supreme Court in IPRS (supra), paragraph 17 of which is reproduced hereunder:

"17. This takes us to the core of the question namely, whether the producer of a cinematograph film can defeat the right of the composer of music or lyricist by engaging him. The key to the solution of this question lies in provisos (b) and (c) to section 17 of the Act reproduced above which put the matter beyond doubt. According to the first of these provisos viz. proviso (b) when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film, or composing music or lyric therefor, i.e. the sounds for

incorporation or absorption in the sound track associated with the film, which as already indicated, are included in a cinematograph film, he becomes the first owner of the copyright therein and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other. The same result follows according to aforesaid proviso (c) if the composer of music or lyric is employed under a contract of service or apprenticeship to compose the work. It is, therefore, crystal clear that the rights of a musiccomposer or lyricst can be defeated by the producer of a cinematograph film in the manner laid down in provisos (b) and (c) of section 17 of the Act. We are fortified in this view by the decision in Wallerstein v. Herbert (1867) Vol. 16, Law Times Reports 453, relied upon by Mr. Sachin Chaudhary where it was held that the music composed for reward by the plaintiff in pursuance of his engagement to give effect to certain situations in the drama entitled "Lady Andley's Secret", which was to be put on the stage was not an independent composition but was merely an accessory to and a part and parcel of the drama and the plaintiff did not have any right in the music."

60. The contention of the Plaintiffs that the observations made by Justice Jaswant Singh in the IPRS Judgment are made specifically in the context of the rights in the 'film', is incorrect. The observations made by Justice Jaswant Singh are in the context of the rights **'in the underlying literary and musical**

works' in a film in which they are incorporated. Justice Singh in order to examine the claim of the Petitioner therein went into the question of "first ownership of copyright" in literary and musical works which are incorporated in a cinematograph film. As observed in paragraph 17 of the judgment, once a literary and/or musical work is incorporated in a film, the producer of the film becomes the first owner of copyright in such literary and/or musical works, unless there is a contract to the contrary between the authors of such works and the producer of such film. This is clarified by Justice Singh in his next line where he observed that, "*the same result follows according to the aforesaid proviso (c) if composer of music lyric is employed, under a contract of service or apprenticeship to compose the work*".

61. Thus, in the opinion of Justice Singh in both cases of (i) in terms of provisions of Section 17 (b) of the Act, where a producer commissions an author to compose an underlying musical or literary work to be incorporated in a film (unless there is a contract where the author has retained his copyright in the underlying works so composed), and (ii) in terms of provisions of Section 17 (c) of the Act, where a producer employs an author under a 'contract of service' (where there is a master-servant relationship); it is the producer of the cinematograph film who becomes the first owner of copyright in the underlying work and not the author of the underlying work, in terms of provisions of Section 17 of the Act.

62. Justice Krishna Iyer, in his opinion, did not disagree with the observations made by Justice Singh. In fact his opening line says, “*The judgment just delivered is on behalf of the court, which makes this footnote, in a sense, otiose*”. In his subsequent line he went on to observe, “*But I do append the abbreviated opinions solely to belight a slightly penumbral area of law and to voice a need for legislative exploration to **protect the category now left in the cold***”. Therefore, there is no doubt that Justice Krishna Iyer concurred with the findings of Justice Singh. However, Justice Krishna Iyer did make an observation that authors of such underlying works should be made entitled to rights outside the cinematograph film and observed that **there was a need for legislative exploration to protect a category, of such authors, now left in the cold.**

63. Since I have come to the *prima facie* conclusion that Shri Prakash Mehra was the owner of the copyright in the underlying literary work by virtue of the provisions of Section 17 (b) and the ratio laid down in the IPRS case is squarely applicable to the present case, the other contentions of Dr. Tulzapurkar and Mr. Khambata concerning the rights of the owner of copyright in the underlying literary work vis-a-vis the rights of owners of copyright in cinematograph film in respect of the said literary work do not fall for consideration at this *prima facie* stage and are kept open. The case of *Music*

Broadcast decided by Vazifdar, J. was concerned with the rights of the owners of sound recording vis-à-vis the rights of the owners in the underlying works and did not consider the question of ownership of authors in the underlying work in relation to Section 17 (b) of the Act which is the issue involved in the present case and therefore need not be gone into at this stage.

64. In any event, I am of the view that even if I were to reach a prima facie finding in favour of the Plaintiffs that they indeed hold copyright as alleged, the Plaintiffs would not be entitled to the only relief sought by them viz. to restrain the Defendants from remaking/releasing the movie “Zanjeer” on 6th September, 2013, on the ground of delay and also on the ground that the Plaintiffs have throughout sought monetary compensation in lieu of their alleged rights and have in fact urged FWICE to ensure that they receive their just and reasonable claim of Rs. 6 crores for use of their copyright for remake of the film “Zanjeer” in Hindi and Telegu languages.

65. DELAY:

The following news articles and trade notices had appeared in the newspapers/websites pertaining to the remake of the film “Zanjeer” by the Defendant No.3.

(i) News article dated 2nd November, 2011, published on India Television.com that Mr. Amit Mehra (Defendant No.3) was set to remake “Zanjeer”;

(ii) News article dated 3rd November, 2011, published in Hindustan Times that Mr. Amit Mehra is planning to remake “Zanjeer”;

(iii) News article published in Hindustan Times dated 3rd November, 2011, wherein in response to the news regarding the remake of “Zanjeer”, Shri Javed Akhtar, and Plaintiff No. 2 was quoted, “*Are they really making it? I don't see any harm in it. But I only hope they make it well*”.

(iv) News Article dated 5th November, 2011, published on Bollywoodz.Net that Mr. Amit Mehra is ready to go ahead with the remake.

(v) News article dated 31st December, 2011, published in TollywoodzAndhra.com stating that Amit Mehra was going to remake “Zanjeer” with Ram Charan Teja in the lead role and Apoorva Lakhia as the Director.

(vi) News article dated 3rd January, 2012, on IBN Live which mentions that Defendant No. 6 – Reliance Big Entertainment Pvt. Ltd. is involved in the remake of the film.

(vii) News article dated 7th January, 2012, published on www.superentertainment.com stating that “Zanjeer-2” will be produced by Ram Mirchandani and backed by Defendant No.6 and Balaji.

(viii) Public notice dated 25th February, 2012, in a film trade magazine from Prakash Mehra Productions regarding press releases made by Anil Mishra (a third party), informing members of the public and the film industry that all copyrights in the original film “Zanjeer” belong to Prakash Mehra Productions.

(ix) News item dated 26th March, 2012, appearing in the newspaper stating that the Plaintiffs had claimed moral rights in the screenplay of the said film and claimed that their permission for use of the original script was not obtained for the remake.

(x) News article dated 29th March, 2012, published in spicyipindia.blogspot.in wherein Plaintiff No.2 stated that an author's permission must be sought as the moral right of the creator can neither be transferred nor stolen from the author.

(xi) News article dated 4th April, 2012, in Hindustan Times wherein Plaintiff No. 2 has stated that a writer has the moral right over his script and no changes can be made in it without the writer's consent or permission.

(xii) News article dated 4th April, 2012 wherein Plaintiff No. 1 denied meeting with Defendant No.3 and agreed that the main bone of contention was the money. He stated "*We are not doing charity. It's a business. There is a copyright. If they give us the price, we will definitely give our permission*".

66. Despite the above articles and trade notices, it was only on 16th April, 2012 that the Plaintiffs through their Advocates issued a notice to Defendant No. 3 and the said Prakash Mehra Productions calling upon them to secure appropriate licenses to remake "Zanjeer". In response, the Advocates for Defendant Nos. 1 and 2 addressed a letter dated 15th May, 2012, to the Advocates for the Plaintiffs denying all allegations pertaining to the Plaintiffs

copyright in the original screenplay/ story of “Zanjeer” and requesting them to provide copies of documents in support of their allegations and also to give inspection of the documents. The Advocates for Defendant Nos. 3 and 4 again addressed a letter to the Advocates for the Plaintiffs, inter alia, reiterating that all rights of “Zanjeer” vest in Prakash Mehra Productions. Nine months after service of the legal notice on behalf of the Plaintiffs, on 9th January, 2013, the Plaintiffs wrote a letter to FWA making a grievance against the Defendants for remaking the film “Zanjeer” by utilizing the story/screenplay written by them without their prior permission and quantifying their claim in monetary terms at Rs. 6 crores as fair and reasonable compensation for Hindi and Telegu remakes. In the minutes of the meeting held before the FWICE, it was decided by the Association to wait for the decision of this Court in respect of the rightful owner. The present Suit was filed on 1st April, 2013 and served on the Defendants on 5th April, 2013.

67. The Plaintiffs being so closely associated with the Film Industry cannot be heard to say that until April, 2012 i.e. when their Advocates issued a notice to the Advocates for Defendant Nos. 3 and 4 they were not aware that Defendant No.3 was in the process of re-making “Zanjeer”, which as set out hereinabove was widely publicized at least since 2nd November, 2011. The submission made on behalf of the Plaintiffs in this regard that they are not supposed to read every newspaper and/or are not supposed to visit the

websites pertaining to films etc. cannot be accepted because even if the Plaintiffs have not visited the websites and/or themselves read the newspapers, their attention would be immediately drawn by the persons from the Film Industry upon reading the news regarding remake of a blockbuster like “Zanjeer” with which the Plaintiffs were admittedly closely associated in the years 1972/73. In fact, even after issuing the notice dated 16th April, 2012, the Defendants approached the FWA after 9 months i.e. only in January, 2013 and filed the present Suit in the first week of April, 2013. The reason given by the Plaintiffs is, that they were led into believing by the Defendant No. 3 that their permission to remake the film would be sought and also because the Plaintiffs had to gather evidence in the form of affidavits from Mrs. Manian etc., is not at all convincing since the Defendants immediately upon receipt of the legal notice had denied and disputed the alleged rights of the Plaintiffs. If the Plaintiffs were sure of their rights as alleged, gathering of evidence in the form of an affidavit from Mrs. Manian would be of no consequence in determining their rights. The Plaintiffs are therefore certainly guilty of delay on their own part in approaching this Court.

68. The Plaintiffs have quantified their claim in monetary terms at Rupees Six Crores:

The Plaintiffs have from day one of making a grievance of the remaking of the film “Zanjeer” by Defendant No. 3, called upon the Defendants to obtain

their permission/consent to re-make/release the film “Zanjeer” i.e. seek permission/consent from the Plaintiffs upon payment. Even prior to the issuance of notice, the Plaintiff No.1 is quoted in the news article in the Times of India dated 4th April, 2012 that *“We are not doing charity. It's a business. There is a copyright. If they give us the price, we will definitely give our permission”*. In fact, in the complaint filed by the Plaintiffs dated 9th January, 2013, addressed to FWA, the Plaintiffs expressed their claim in monetary terms by recording that *“we would claim Rs. 3 crores for Telugu version. It would be reasonable and fair and without any doubt that any script and story that can fetch Rs. 3 crores for Telugu version would have at least the same commercial value for its Hindi version if not more. Thus our claim of Rs. 3 crores for the Hindi remake as well is fair and reasonable. Thus the total claim of Salim-Javed for this matter would be Rs. 6 crores”*. The Plaintiffs urged the FWA to ensure that they get justice as well as their claim, and thereby their copyrights are protected. Thus the Plaintiffs from day one made it clear that they are willing to give permission to the Defendants for remake of the movie “Zanjeer” upon payment. They themselves asserted a sum of Rs. 6 crores, which according to them would be fair and reasonable monetary compensation. In fact, the Defendant No.4 clarified before the FWICE, as can be seen from the minutes of the meeting held before the FWICE on 12th March, 2013, that as and when the Court decides, they will not be denying the rightful money to the rightful owner. Thus, the Defendants also proceeded on the basis that in the event of

the Court deciding that the Plaintiffs are the rightful owners of the copyright, and compensation for use of the said copyright is payable, they would be paying the same. It cannot be denied that this impression was given to the Defendants by the Plaintiffs as set out hereinabove from day one. In fact the Plaintiffs had gone public on this issue and had repeatedly asserted that they are entitled to the dues/compensation /royalty in lieu of the Defendants using their copyright for remake of the film "Zanjeer". However, when the Plaintiffs filed the present Suit on 1st April, 2013 and served the same on the Defendants on 5th April, 2013, almost the entire shooting of the film was complete and further shooting of only 10 days remained to complete the movie. The only relief that the Plaintiffs sought in the Plaint was for permanent mandatory orders of injunction restraining the Defendants from infringing the copyright of the Plaintiffs in the story, dialogues and screenplay of the Hindi feature film "Zanjeer" and from in any manner exhibiting, releasing the said remake film "Zanjeer" in Hindi and Telegu languages or any other language. The Plaintiffs in the alternative have not claimed any monetary compensation. The Plaintiffs have now relied on certain decisions in support of their submission that a Defendant who after knowing of the claim of the Plaintiff continues to infringe the rights of the Plaintiffs will be deemed to be aware of the consequences which may follow due to his infringement and if the Defendant continues to infringe the rights of the Plaintiff, he does so at his own peril and therefore the Plaintiffs are entitled to the said mandatory injunctions. Acceptance of such a

submission of the Plaintiffs in the facts and circumstances of this case, who from day one upto the completion of shooting have repeatedly claimed money in lieu of the purported infringement of their copyright, would be totally unfair to the Defendants, who in response to the monetary claim of the Plaintiffs had also submitted that they will not deny the rightful money to the rightful owner, as and when decided by the Court. The submission now made by the Plaintiffs that their claim of Rs. Six Crores was tentative, and not binding on them cannot be accepted. Section 55 of the Act provides for several remedies for infringement of copyright viz. injunction, damages, accounts, etc. However, the test laid down for the purpose of determining the question of whether an injunction ought to be granted in a particular case is to be found in Section 38 of the Specific Relief Act, 1963 which reads as under:

“38. Perpetual injunction when granted -

.....

(3) *When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the court may grant a perpetual injunction in the following cases, namely-*

(a) where the defendant is trustee of the property for the plaintiff.

(b) where there exists no standard for ascertaining the actual damage caused or likely to be caused by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief. “

69. In the present case the Plaintiffs have not only delayed issuing of the legal notice as well as filing of the Suit against the Defendants but have themselves asserted that a sum of Rs. 6 crores would be a fair and reasonable monetary compensation. The Plaintiffs are therefore not entitled to a mandatory injunction as sought even if this Court would have come to the conclusion that the Plaintiffs are the owners of the copyright as alleged since the Plaintiffs' claim falls within the provisions of Section 38 (3) (c) and not under Section 38 (3) (b) of the Specific Relief Act, 1963. Therefore, as stated earlier, the Plaintiffs are not entitled to mandatory injunction even if this Court were to proceed on the basis that the Plaintiffs have made out a *prima facie* case that they are the owners of the copyright in the underlying literary work in respect of the film "Zanjeer" which was released in 1973.

70. Under the circumstances the Notice of Motion is dismissed.

(S.J. KATHAWALLA, J.)