

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment pronounced on: 24th August, 2015

+ **CS (OS) 1892/2006**

SHOLAY MEDIA AND ENTERTAINMENT PVT. LTD AND ANR.

.... Plaintiffs

Through Mr. Pravin Anand, Adv. with
Ms. Geetanjali Visvanathan, Adv.

versus

PARAG SANGHAVI AND ORS Defendants

Through Defendants are *ex-parte*.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The plaintiffs have filed the present suit for permanent injunction restraining infringement of registered trademarks, infringement of copyright, passing off, rendition of accounts, damages and delivery up etc against the defendants.

2. The plaintiffs are private limited companies engaged in the business of producing, exhibiting and distributing cinematograph films.

3. The plaintiffs are the copyright owners and administer all intellectual property in respect of 32 cinematograph films, including the iconic and eternal hit film "SHOLAY". The other hits in the Sippy repertoire of films include films such as '*Johar Mehmood in Goa*',

Bhramachari', Bandhan', Andaz', 'Seeta Aur Geeta', 'Shaan', 'Saagar, Patthar Ke Phool', Sheshensha Hameshaa' etc.

4. The history of the plaintiffs companies and devolution of rights in the film is summarized herein below;

- a) 26th November, 1954: Plaintiff No.2 was incorporated under the leadership of the late Mr. G.P. Sippy to produce and handle distribution of cinematograph films. Certificate of Incorporation and Memorandum and Articles of Association of plaintiff No.2 has been exhibited as Ex PW 1/3 and Ex PW 1/4.
- b) 3rd August, 1965: M/s Sippy Films, a partnership firm, was formed. Films belonging to the Sippy repertoire were produced through this firm. Table summarizing the dates of appointment and retirement of various members of the Sippy family who became partners in the firm and Directors of plaintiff No.2 has been marked as Mark A.
 - Mr. Ajit Sippy (defendant No.7), through whom defendant Nos.3, 5 and 6 claimed to have acquired certain rights, was admitted as a partner of M/s Sippy Films on 1st January, 1976 and retired on 15th September, 1976. The retirement deed by virtue of which defendant No.7 relinquished all rights in the Sippy repertoire has been exhibited as Ex PW1/5.

- c) 10th September, 1997: Plaintiff No.2 was admitted as a partner in the partnership firm. The deed of partnership has been marked as Mark N.
- d) 11th September, 1997: M/s Sippy films, the erstwhile partnership firm has only two partners remaining i.e. Mr. Vijay Sippy and plaintiff No.2. The deed of partnership has been marked as Mark O.
- e) 17th April, 1998: Dissolution of the partnership firm on the death of Mr. Vijay Sippy. Extract from the Register of Partnerships certifying the dissolution of M/s Sippy Films has been exhibited Ex PW1/9. After dissolution of the partnership firm, plaintiff No.2 through Mr. Sascha Sippy, the sole heir of Mr. Vijay Sippy and one of the Directors of plaintiff No.2, continued to exercise all rights in the Sippy repertoire and the name Sippy Films' came to denote a proprietary concern of plaintiff No.2. The last will of Mr. Vijay Sippy in favour of his son Mr. Sascha Sippy has been marked Mark C.
- f) 11th September, 2000: Plaintiff No.1 was incorporated in order to capitalize on the brand value and merchandising potential inherent in the iconic hit film 'Sholay'. Copies of the certificate of Incorporation, Articles and Memorandum of Association of plaintiff No.1 has been exhibited as Ex PW 1/11 and Ex PW 1/12. The gift deed dated 14th September, 2000 whereby plaintiff No.2 transferred all the right, title and interest in the film Sholay to plaintiff No.1 has been exhibited as Ex PW1/13.

5. The film Sholay released on 15th August, 1975 under the Sippy Films banner, the film SHOLAY was an instant hit. Over the years, the film has not only achieved a cult status but still remains the box office gold standard for blockbuster films of Indian cinema. Several memorable quotes, books and case studies written about SHOLAY has been exhibited as Ex PW1/14, Mark D, Ex PW1/16, Ex PW1/17, Mark E (Colly), Ex PW1/19, Ex PW1/20 and Mark F which illustrates the tremendous goodwill and reputation enjoyed. The table summarizing the most memorable quotes in the above exhibits has been annexed as Annexure B.

6. The firsts achieved by the film SHOLAY which illustrate the reputation and popularity of the film have been enlisted herein below;

- The film was voted as the 2nd greatest Bollywood film in 100 years of Indian Cinema by a poll conducted in United Kingdom exhibited as Ex PW 1/19 and Ex PW1/20.
- The film ran interruptedly for a period of five years and was inducted into the Guinness book of World Records for the same which have been exhibited as Ex PW1/14, Ex PW1/16, Ex PW1/17 and Mark F.
- The film made use of several cinematographic innovations such as the use of 70mm format with 6 track stereophonic record which has been exhibited as Ex PW1/14, Ex PW1/17 and Mark F.

- The film was the first Indian movie to market its background music/songs and dialogues. The dialogues such as "*Jo dargaya, Samjho mar gaya*", "*Ai Chammia*", "*Arreo Sambha*", "*Kitne Aadmi the*", "*Mujhe Gabbar Chaahiye- Zinda*", "*Yeh Haath Nahin, Phaansi Ka Phanda Hai*" have been immortalized and are still afresh in the audiences mind exhibited as Ex PW1/14, Ex PW1/16 and Ex PW1/ 17.
- The film achieved a record of 60 golden jubilees across theaters in India, a record which remains unbroken as of the present day. The film was also the first movie in the history of Indian cinema to celebrate a silver jubilee at over 100 theatres nationwide which has been exhibited as Ex PW1/ 17.
- The film was voted as BBC India's Film of the Millennium in 1999 which has been exhibited as Ex PW1/ 17.

7. The characters in the film namely *GABBAR SINGH'*, *'JAI'*, *'VEERU'*, *BASANTI* , *RADHA* , *THAKUR'*, *DHANNO'* and *SAMBHA'* are extremely well developed, unique and distinctive making them sufficiently delineated, with widely identifiable traits, thus meriting copyright protection exhibited as Ex. PW 1/14, Ex.PW 1/16, Ex. PW 1/17 and Mark F.

8. The characters *GABBAR SINGH'*, *'JAI'*, *'VEERU'*, *BASANTI* , *RADHA'* and *THAKUR'* are also so central to the entire plot that they

constitute the story being told and thus, merit copyright protection. The various factors indicating that all the aforementioned characters are highly delineated and are the story being told is indicated through the table annexed as Annexure C.

The said characters satisfy both the 'Especially Distinctive Test' and the 'Story being told Test' as propounded by various courts in India and abroad. The relevant cases have been annexed as Annexure G.

9. The film SHOLAY has become a tremendous marketable commodity and apart from royalties from traditional modes of exploitation such as satellite, television, cable and TV broadcasts etc., the plaintiffs also enjoy lucrative profits from merchandising exhibited as Mark G, Ex PW1/14, Ex PW1/17 and Mark F.

10. The plaintiffs have been using the trademark SHOLAY since the year 1975 in relation to cinematograph films, vinyl records and audio tapes etc. Realizing the popularity of the movie and the potential for merchandising this name in relation to various goods/services, the plaintiffs applied for registration of the title "SHOLAY" as a trademark under several classes. The mark "SHOLAY" has been registered in favour of plaintiff No.2, as follows:

Sl. No.	Trademark	Class	Registration No.
1.	SHOLAY	16	928687
2.	SHOLAY	31	966278

Copies of the extracts from the Register of Trade Marks is filed herein has been annexed as Annexure L.

11. The plaintiffs have also obtained registration of the marks "GABBAR" and "GABBAR SINGH", as follows:

Sl. No.	Trademark	Class	Registration No.
1.	GABBER SINGH	14	967058
2.	GABBAR SINGH	29	967064
3.	GABBAR SINGH	30	967065
4.	GABBAR SINGH	34	967067

Copies of the trademark journal advertisements for the above are annexed as Annexure M. In addition, the plaintiffs have applied for registration of other character names

12. These trademarks were filed with a view to protect the name and prevent its misappropriation by unscrupulous infringers. Apart from the trademark applications in India, the plaintiffs also applied for the trademark SHOLAY in other countries such as Bangaldesh. Illustratively, the plaintiffs have tabulated below the details of the trademark applications in India :

Sl. No.	Trademark	Appl. No.	Class	Goods
1.	SHOLAY	967055	3	Perfumes, non-medicated cosmetics such as shampoos soaps etc.

2.	SHOLAY	928686	9	Video films, tapes, cassettes etc.
3.	SHOLAY	966272	14	Clocks, wristwatches, costume, jewellery etc.
4.	SHOLAY	966273	18	All kinds of leather and imitations of leather etc.
5.	SHOLAY	967054	21	Cleaning material like mops and wringer buckets etc.
6.	SHOLAY	966274	25	T-shirts, jeans, caps etc.
7.	SHOLAY	966275	28	Stuffed toy figures and toy animals etc.
8.	SHOLAY	966276	29	Meat, fish, poultry and game etc.
9.	SHOLAY	966277	30	Coffee, tea, cocoa, sugar rice etc.
10.	SHOLAY	966279	34	Gutka, zarda, quiwam, all types of chewing tobacco

Copies of representation sheets of some of the said applications have been filed.

13. Plaintiff No.2 is the proprietor of the trademarks 'SHOLAY', 'GABBAR' and 'GABBAR SINGH' which are registered under various classes. The certificates for use in legal proceedings for these trademarks have been filed as Ex PW1/21A to Ex PW1/21G.

As per law, if any third person's use of the said trademarks without permission of the plaintiffs constitutes infringement.

14. Apart from the statutory rights, the trademarks 'SHOLAY', 'GABBAR' 'GABBAR SINGH', due to continuous and extensive use over a long period of time spanning a wide geographical area, coupled with vast promotion and publicity enjoy an unparalleled reputation and goodwill, so much so that they are identifiable with the plaintiffs companies and have acquired the trappings of a well known trademark.

15. Copyright in the cinematographic film "SHOLAY" :

It is claimed by the plaintiffs that Sippy Films, the erstwhile partnership concern, by virtue of being the producer of the film SHOLAY was the first owner of copyright in the said film and its constituent parts as per the mandate of the Copyright Act, 1957.

16. As a consequence of gift deed dated 14th September, 2000, the copyright in the cinematographic film SHOLAY stood transferred to plaintiff No.1. Thus, plaintiff No.1 is the owner of the copyright as well as all common law rights in the cinematographic film SHOLAY and the constituent parts of the cinematographic film SHOLAY. By virtue of being the owner of copyright in the cinematographic film SHOLAY as well as those of its constituent parts i.e. the screenplay, script, sound recordings (i.e. songs and recording of the back ground music), musical works, lyrics, artwork etc. the plaintiffs are thus according certain exclusive rights under Section 14 of the Copyright

Act, 1957. These exclusive rights accord plaintiff No.1 the exclusive right to exploit the cinematographic film SHOLAY under Section 14(d) of the Copyright Act, 1957.

17. On or around 30th November 1999, the plaintiffs announced the sequel to SHOLAY, at the President Hotel in Mumbai. A press conference was called to publicize the sequel. Various people attended the conference including Mr. GP Sippy, Dharmendar, Hema Malini, Shaan Uttam Singh and Sippys. Nearly 186 members of various publications of the press including 10 to 12 live television channels were also present at the said conference. Copies of newspaper reports have been annexed as Annexure I.

It was discussed that defendant No.3, Ram Gopal Verma would be the Director in the film industry in Mumbai. He asked the plaintiffs Production Manager, Hanif Chunawala to invite him on behalf of Mr. G.P. Sippy at the residence of the plaintiffs being 20A, Lands End, Doongresi Road, Malabar Hill, Mumbai. On or around mid-December 1999, he visited there. He was interviewed to make a sequel to SHOLAY. Mr. G.P.Sippy was present at the meeting. But Mr. Verma disagreed with the sequel concept and instead wanted to make a modern day remake of the film "SHOLAY" itself which the plaintiffs declined to accept.

18. Press releases and newspapers articles announcing the release of remake of SHOLAY by the defendants were marked as Mark L (Colly) and Ex PW1/30 which reads as under:-

- (i) On 31st August, 2005 Ram Gopal Varma's Sholay is not doomed: Yahoo Mail.

"After much delay and shuffling in its star cast, Ram Gopal Varma's much talked about remake of `Sholay' will go on the floors in September"

"Ramu says his Sholay will be very different from Ramesh Sippy's classic. While the film's story will stay loyal to the original, the setting would be very modern" pg. 174 Part III.

- (ii) On 14th November, 2005- Huge Star cast in Sholay remake

"News is already out that director Ram Gopal Varma will be making a remake of all time Hindi classic, Sholay. Veteran Actor Amitabh Bachchan will play the character of Gabbar Singh, his son, Abhishek Bachchan will play Veeru and Mohit Ahlawat will be Jai in the film" pg. 181 Part III

- (iii) On 20th August, 2006 -Urmila to do Helen's dance number in 'Sholay' remake. pg 182 and 184 Part III

- (iv) On 18th September, 2006- Eternal Asha to sing 'Mehbooba'

"If you've been wondering what's going to happen to the iconic Sholay number Mehbooba Mehbooba' in Ram Gopal Varma 's remake, the answer is here. The song in which a drooling Gabbar Singh watches a gyrating Helen, was sung by R.D Burman. The new version will have his widow Asha Bhosle belting it out for the new generation of Sholay watchers.pg 186 Part III.

19. It is alleged by the plaintiffs that in 2003, defendant No.3 contacted and requested the late Mr. G.P Sippy and his grandsons, who are directors of the plaintiffs companies to license the rights to

remake SHOLAY, including use of the title SHOLAY and other characters of the film. However the negotiations failed between the parties. The defendant Nos. 1 to 6 were aware and acknowledged with the plaintiffs' rights in the film SHOLAY. The affidavit of Mr. Sascha Sippy filed along with the plaint, narrating the said facts has been marked as Mark B.

20. Despite of said circumstances, negotiations failed between the parties and the defendant No.3 wanted to release the film under the title "Ram Gopal Varma Ke Sholay". However, when informed about its title, the plaintiffs filed a suit against the defendants by order dated 5th October, 2006 and an undertaking to change the title of the film to "Ram Gopal Varma ki Aag" was recorded in the order dated 16th July, 2007. The said fact was admitted.

The defendant Nos. 3, 5 and 6 in their written statement in paragraph 3 admitted that the title of the impugned film was proposed to be "Ram Gopal Varma Ke Sholay" and the proposed film, "may have some characters which may have similar names as that of the original film "Sholay" such as GABBAR, GABBARSINGH etc."

21. Defendant No. 1 is the Managing Director of defendant No. 2, the latter being a company engaged in the business of movie production. Defendant No. 3 is a renowned film Producer-Director as well as the company director of the defendant No. 5 and 6, which are production houses. Defendant No.4 is involved in the business of production and distribution of the works of defendant No.3.

Defendant No.1 to 6 have been impleaded in the present

matter as they were alleged in involved in the production and distribution of the impugned film 'Ram Gopal Varma Ki Aag', which as detailed below infringes the plaintiffs' various rights in the film SHOLAY.

22. Defendant No.7 is the son of Mr. G.P Sippy who has been impleaded since he is known to defraud people by misrepresenting that he is the person vested with all rights in the Sippy repertoire. Defendant No.7's claims have been discredited in the past and by virtue of order dated 8th January, 2010 in CS (OS) No.1681 of 2010, defendant No.7 has been restrained from dealing with any rights in the Sippy repertoire.

23. Defendant Nos. 1, 2 and 4 did not file their written statement and were proceeded *ex-parte* vide order dated 29th July, 2009. Defendant No.3, 5 and 6 filed their written statement on 2nd December, 2006 but were proceeded *ex-parte* on 5th December, 2012. Defendant No.7 filed its written statement on 29th January, 2007 but was proceeded *ex-parte* on 5th May, 2010. Evidence by way of affidavits were produced. The witnesses were not cross-examined on behalf of any defendants.

24. It is the common defence raised by defendants No.3,5, 6 is that they have purportedly acquired the rights to remake the film SHOLAY from defendant No.7 and defendant No.7 in turn has acquired rights from Mr. Vijay Sippy and Mrs. Mohini Sippy (the erstwhile partnership firm Sippy Films). The said defense is false on the following grounds;

- (a) Acknowledgement of plaintiffs' rights: defendant Nos. 3, 5 and 6, as detailed above acknowledged the plaintiffs rights by initially approaching them for a license to remake SHOLAY.
- (b) Letters dated 16th November, 2005 by Mr. G.P Sippy to defendant No.3 stating that he had not agreed to any terms and conditions qua remake of SHOLAY and defendant No.7 was not authorized directly or indirectly to deal with the film SHOLAY.
- (c) Order dated 8th January, 2010 passed in CS(OS) No.1691 of 2008: Claims made through defendant No.7 have been discredited by this Court in the past and defendant No.7 has been restrained by this Court from infringing rights in the Sippy repertoire.
- (d) Defendant No.7 failed to substantiate his claims in the criminal complaints filed against the Directors of the plaintiff companies and findings in the police report are in fact favour of the plaintiffs.

25. The Court vide order dated 8th January, 2010 in CS (OS) No. 1691 of 2008 titled 'Sholay Media and Entertainment Private Limited and Ors v. Mr. Ajit Sippy and Others' and orders dated 6th April, 2010 and 4th April, 2013 in CS(OS)No. 591 of 2010 titled 'Sholay Media and Entertainment Private Limited and Anr. v. Indus Video Private Limited and Ors.' and order dated 29th May, 2013 in FAO(OS) 266 of 2013 titled 'Indus Video Private Limited v. Sholay Media and Entertainment Private Limited and Anr.' recognized the rights of the

plaintiffs as copyright owners of the entire Sippy repertoire and restrained third parties from infringing the plaintiffs' rights including defendant No.7 (Mr. Ajit Sippy). Copies of the judgments are filed as Annexure F.

26. The plaintiffs filed CCP No. 167/2006, as they had chanced upon posters where the defendants were still publicizing their movie as 'Ram Gopal Verma Ke Sholay'. Further, the defendants continued to issue statements in the press which clearly showed that the defendants were continuing their project to remake SHOLAY and also using the characters such as GABBAR SINGH, JAI-VEERU and songs such as Mehbooba-Mehbooba in the film. The said newspapers, online articles and photograph of the poster have been exhibited as Ex PW1/31(Colly). The relevant extracts showing the malafide intention of the defendants in infringing the plaintiffs' rights in the film SHOLAY have been annexed as Annexure D.

27. The impugned film titled 'Ram Gopal Varma Ki Aag' was released on 31st August, 2007. The impugned film as released is still a remake of the film SHOLAY', as it retains the same plot. At various instances the defendants have used the underlying music, lyrics and background score and even dialogues from the original film. Further, the characters in the impugned film namely BABBAN SINGH, NARSIMHA, RAJ-HEERO, GHUNGROO, DURGA DEVI and TAMBHE bear striking resemblances to character traits of GABBAR SINGH, THAKUR, JAI-VEERU, BASANTI, RADHA and SAMBHA

respectively. There are other peripheral characters in the impugned film i.e. RAMBHA BHAI, REHMAT'S FATHER AND REHMAT who bear resemblance to SOORMA BHOPALI, IMAAM SAAB and AHMED from the original film. An analysis of the similarities between the plaintiffs film SHOLAY and the impugned film is detailed in paragraph 33 of the affidavit exhibited as PW1/A. A synopsis showing that the characters in the impugned film are identical to the characters in SHOLAY has been annexed as Annexure E.

28. The present suit was filed prior to the release of the impugned film by defendants No.1 to 6, which was heavily advertised and published in the media as a remake of the plaintiffs' iconic film SHOLAY.

29. The various newspaper articles, interviews given by defendant No.3 himself and other factors which led the plaintiffs to believe even prior to the release that the impugned film appears a remake of the film SHOLAY as the impression got by the public at the time of pre-released or the post released.

30. The plaintiffs are claiming as the copyright owners in the entire Sippy repertoire of 32 films including the film Sholay either by virtue of being producers as provided under Section 2(d)(v) and Section 2(uu) read with Section 17(c) of the Copyright Act and/or by virtue of devolution of rights.

31. The plaintiffs' claim is that they are absolute and complete owner of the copyright in the film SHOLAY and its constituent parts

including the script, screenplay, underlying music and lyrics, synchronized background score, artwork, characters, dialogues and has all exclusive rights under Section 14 of the Copyright Act, 1957.

32. The film Sholay was released on 15th August, 1975 and was produced by Mr. G.P. Sippy for his partnership firm, Sippy Films, in which his sister, Ms. Rukhi Sippy and his son Mr. Vijay Sippy were partners at that time.

33. There are various rights in the film SHOLAY, which were originally owned by Sippy Films and subsequently owned by Sippy Films Pvt. Ltd., the plaintiff No.2, when the latter became the sole proprietor of the former herein. Thereafter the plaintiff No.2 gifted all these rights to plaintiff No.1 on 14th September 2000, so between the two plaintiffs they have been and are the owners of all intellectual property in the film SHOLAY, being trademark rights, copyrights, moral rights and all other rights.

34. Under the Copyright Act, 1957 the plaintiff No.1, the exclusive right of exploitation or the rights to authorize the exploitation of the separate constituent elements that stand incorporated in the cinematographic film SHOLAY, i.e. the following :

- i. The script and screenplay of the film SHOLAY which is a original literary work protected under Section 14 (a) of the Copyright Act, 1957;

- ii. The Sound recording and recording of the background score of the cinematographic film SHOLAY which is protected under Section 14 (e) of the Copyright Act, 1957;
- iii. The underlying musical works (i.e. 'music') which are incorporated in the sound recordings (i.e. 'songs' of the film) and background score and synchronized with the cinematographic film SHOLAY which is protected under Section 14 (a) of the Copyright Act, 1957;
- iv. The underlying literary works (i.e. lyrics) which are incorporated in the sound recordings (i.e. 'songs' of the film) and synchronized with the cinematographic film SHOLAY which is protected under Section 14 (a) of the Copyright Act, 1957;
- v. The artistic works (i.e. art works / sets / costumes), which are, incorporated in the cinematographic film SHOLAY that is protected under Section 14 (a) of the Copyright Act, 1957.
- vi. The dialogues (i.e. dramatic works) of the cinematographic film SHOLAY, which is protected under Section 14 (a) of the Copyright Act, 1957.

35. Any derogation/violation/unauthorized/unlicensed use, as mandated by Section 14 read with Section 51 of the Copyright Act, 1957, of the cinematographic film SHOLAY or its constituent elements as described above, without the express written authorization of plaintiff No.1 would thus amount to an infringement

of Copyright Act, 1957 and thus be subjected to the civil and / or criminal remedies provided by the Copyright Act, 1957.

36. The publicity material coupled with the impugned film, gives an overall impression that it is a remake of the film SHOLAY. The use of similar plot and characters in the impugned film coupled with use of the underlying music, lyrics and background score and even dialogues from the original film SHOLAY amounts to infringement of copyright in the film SHOLAY. Even if the impugned film is considered as an adaptation of the film SHOLAY, the same being without authorization of the copyright owner amounts to passing off as the plaintiffs are the owner of the names of characters and dialogues. Such use by the defendant Nos.3 to 6 was unauthorized and it is a deliberate act of the said defendants in order to gain profits. They are also guilty of infringement under Section 14(a) read with Section 55 of the Copyright Act, 1957.

37. The defendants have distorted and mutilated the original copyright work of the plaintiffs. The defendants have also infringed the moral rights of the plaintiffs as under Section 57 of the Copyright Act, 1957. As the said defendants have similar name of characters under the music, lyrics and dialogues from the original work of the plaintiffs which was created by them for the first time and were author and owner of the same, the defendants are thus also guilty of passing off. They are not able to assign any valid reason for the same. Despite of statement made in the Court for

change of the name of the movie, when the same was released, still it appears that the defendants' movie have similar name of the characters and they have used the lyrics and dialogues in material form in their movie. The movie was produced and released without authorisation from the owner and author i.e. plaintiffs.

38. For the aforesaid reasons the suit of the plaintiffs is decreed by passing the permanent injunction restraining the defendants, their partners or proprietor as the case may be, their principal officers, servants and agents, from manufacturing, selling, offering for sale, distributing, advertising including on the internet and in any other manner using the SHOLAY, GABBAR, GABBAR SINGH trademarks or any other deceptively similar mark amounting to infringement of the plaintiffs' registered trademarks and from infringing the copyright of the plaintiffs in the cinematographic film SHOLAY, by substantially reproducing the film SHOLAY or the constituent parts of the film SHOLAY i.e. the script, screen play, sound recordings, lyrics, musical works, art works amounting to infringement of copyright in the works of the plaintiffs as described at paragraph 26 of the plaint and from passing off their film or other production, using the mark SHOLAY or any other deceptively similar mark, or by using the characters or names thereof, from the plaintiffs' work, or in any other manner associating their film or other production with the film of the plaintiffs in any other deceptive manner, as to pass off or enable others to pass off the defendants' production or work as that of the plaintiffs and also from infringing the moral rights of the plaintiffs, and from

distorting, mutilating, modifying or doing any other act that is prejudicial to the honour and reputation of the work as well as to the plaintiffs and their work.

39. With regard to the relief claimed by the plaintiffs for damages to be paid to the plaintiffs by the defendants on account of the infringement of copyright, dilution, tarnishment and passing off the impugned film as associated with the plaintiffs.

40. The plaintiffs have claimed Rs.1,00,01,000/- as damages on the basis of claim for damages on the following reasons given by the plaintiffs:

- a) Loss of Business or Sales : Defendant No.3 disrupted the plaintiffs business by issuing false statements in the newspapers and other media, stating that he had acquired the necessary right to remake Sholay'. Copy of letter received from prospective licensee rescinding their agreement of about USD 500,000 plus royalties with plaintiff No.1 on basis of such statements of defendants has been marked as Mark M and Mark L.
- b) Actual Illegal Profits earned by the defendants : Illegal monies earned by the defendants through exploitation of various rights such as satellite, television and cable broadcast, sale of VCD and DVD's of the impugned film etc.,
- c) Loss of reputation and goodwill: The impugned film was a flop and failure. Thus, being portrayed as a remake of

SHOLAY, immense loss to reputation and goodwill has been caused. Loss through infringement of moral rights of the plaintiffs is also incalculable.

d) Exemplary and Punitive Damages and Cost of Litigation.

41. Mr. Pravin Anand, learned counsel for the plaintiffs has submitted that actual damages have not been proved, however, he argues that the plaintiffs are entitled for punitive damages which have been granted by the Courts from time to time.

Punitive damages

42. With regard to the relief of damages as claimed by the plaintiff in para 44 (vii) of the plaint, this Court has previously granted both exemplary and punitive damages against the defendants in ex-parte matters of similar nature. In ***Time Incorporated Vs. Lokesh Srivastava & Anr.***, 2005 (30) PTC 3 (Del.) while awarding punitive damages of Rs. 5 lakhs in addition to compensatory damages also of Rs. 5 lakhs, Justice R.C. Chopra observed that “time has come when the Courts dealing in actions for infringement of trademarks, copyrights, patents etc., should not only grant compensatory damages but also award punitive damages with a view to discourage and dishearten law breakers who indulge in violation with impunity out of lust for money, so that they realise that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them.”

43. Further, this Court in **Microsoft Corporation Vs. Rajendra Pawar & Anr.**, 2008 (36) PTC 697 (Del.) decided on 27th July, 2007 has held “Perhaps it has now become a trend of sorts, especially in matters pertaining to passing off, for the defending party to evade court proceedings in a systematic attempt to jettison the relief sought by the plaintiff. Such flagrancy of the Defendant’s conduct is strictly deprecatory, and those who recklessly indulge in such shenanigans must do so at their peril, for it is now an inherited wisdom that evasion of court proceedings does not de facto tantamount to escape from liability. Judicial process has its own way of bringing to tasks such erring parties whilst at the same time ensuring that the aggrieved party who has knocked the doors of the court in anticipation of justice is afforded with adequate relief, both in law and in equity. It is here that the concept of awarding punitive damages comes into perspective.”

44. The defendant Nos.3 to 6 in the present case have intentionally and deliberately brought the movie in violation of plaintiffs’ exclusive moral rights of copyright and passing off. On the relevant date they were aware about the rights of the plaintiffs, their ownership and authorship as well as use of unauthorized copyright. It is not the case of the said defendants that the same is not created by the plaintiffs and they are not the owners and authors.

45. In view of the facts of the present case, the plaintiffs are granted a sum of Rs.10,00,000/- as punitive damages against the defendant Nos. 3 to 6 i.e. Mr. Ram Gopal Varma, Mr. Madhu Varma,

M/s RGV Productions Pvt. Ltd. as well as Varma Corporation Limited against the prayer made in para 44(vii) of the plaint. The other reliefs are rejected as not pressed except the costs for which the defendant No.3 to 6 are burdened with the costs of Rs.50,000/- which shall be deposited by them with Prime Minister Relief Fund within four weeks from today.

46. The suit for permanent injunction is decreed as per para 38 of the judgment.

47. Decree be drawn accordingly.

48. The suit is disposed of.

(MANMOHAN SINGH)
JUDGE

AUGUST 24, 2015