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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(COMM) 1329/2016

YASH RAJ FILMS PVT LTD Plaintiff
Through Ms. Suveni Bhagat with Mr. Sajal
Jain, Advocates.

versus

SRI SAI GANESH PROSDUCTIONS & ORS Defendants
Through Mr. Yuganshu Sharma, Advocates.

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Reserved on : 02nd May, 2019
Date of Decision: 08th July, 2019

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

JUDGMENT

MANMOHAN,J

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

“(i) Pass a decree permanently restraining and enjoining the Defendants, their servants, employees, representatives and agents, jointly and severally, from violating and infringing, in any manner, the copyrigyhts of the Planitiff comprised in and over the movie BAND BAAJA BAARAAT and from dubbing or releasing the movie JABARDASTH in any other language including Tamil, and from releasing the movie JABARDASTH on any other format including on DVDSs, VCDs Blu-ray discs or in any other electronic or magnetic format including on the television, and from showing the movie JABARDASTH in theaters across the country;

(ii) *Pass a decree in favour of the Plaintiff and against the Defendants jointly and severally directing the Defendants to render accounts of the income received in any manner from the movie JABARDASTH or from any of the works comprised in that movie and thereafter award damages to the Plaintiff in the sum of Rs.20 lacs or such higher amount as may be determined or ascertained after rendition of accounts by the Defendants;*

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

(iv) *Award costs; and*

(v) *Pass such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice.”*

(emphasis supplied)

2. Vide order dated 06th March, 2013, this Court granted an *ex-parte ad interim injunction* in favour of the plaintiff and against the defendants. The relevant portion of the said order is reproduced hereinbelow:-

“10. Having regard to the submissions made by the learned Senior Advocate for the plaintiff as noted hereinabove and upon perusing the averments made in the plaint and the documents placed on record, this Court is of the prima facie opinion that the plaintiff are entitled to grant of an ex parte ad interim injunction in its favour. Accordingly, the defendants, their representatives, distributors, agents, etc., are restrained from releasing the Telugu film “JABARDASTH” in any other format, including, DVDs, VCDs, Blu-ray discs or in any other electronic or magnetic format including on television, till the next date of hearing.”

3. On 21st August, 2014, this Court had granted the defendant nos. 1 and 2 an opportunity to place their Written Statements on record, by condoning the delay subject to payment of costs within four weeks. However, the said order was not complied with.

4. Consequently, vide order dated 01st December, 2014, the right of the defendant nos. 1 and 2 to place their Written Statement on record was closed and their defence was struck off. Further, vide order dated 29th January, 2015, defendant nos. 1 and 2 were proceeded ex-pate.

5. On 08th February, 2018, the present suit was decreed *qua* defendant no. 3 (Director of the defendant's film) in accordance with I.A. No.1881/2018 filed under Order XXIII Rule 3 read with Section 151 CPC. In the aforesaid application, the defendant no.3 acknowledged the plaintiff to be the owner of copyright of the script, screenplay, dialogues and all other works which could be said to be copyright of the movie 'BAND BAJA BARAT'. The relevant portion of the joint compromise application is reproduced hereinbelow:-

"3. That the Defendant No. 3 acknowledges the Plaintiff to be the owner of the copyright of the script, screenplay, dialogues, and all other works which can be copyrighted, of the movie "BAND BAAJA BAARAAT". Without any admission of liability as mentioned in the Plaintiff in the aforementioned Suit, the Defendant No. 3 agrees that the Suit may be disposed of against it in terms of Prayer (i) in the Plaintiff.... "

(emphasis supplied)

6. On 02nd May, 2019, learned counsel for plaintiff gave up prayers (ii) and (iii) of the plaint. The statement made by learned counsel for plaintiff was accepted by this Court and the plaintiff was held bound by the same. On the same day, arguments were heard and judgment was reserved.

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

- a. The plaintiff is a company engaged *inter alia* in production, direction and marketing etc. of films and over the years has attained an unparalleled reputation both in India as well as across the world.

- b. On 24th September, 2010, the plaintiff announced the release of its film BAND BAAJA BAARAAT (hereinafter referred to as "**the Plaintiff's Film**"). The story line of the film is of the hero and heroine starting their own wedding planning company, falling in love, followed by the hero and heroine parting of ways and ultimately reuniting.
- c. On 10th December, 2010 the Plaintiff's Film was released across 629 screens in India and 114 screens in other countries. The Plaintiff's Film received numerous positive reviews from reviewers and film critics. The Plaintiff's Film completed hundred days in theatres and continued to be screened on 122 screens in India as on 17th March 2011. The Plaintiff's Film also received numerous awards and accolades.
- d. During the financial year 2010-2011, the Plaintiff's Film earned a total revenue of Rs. 21,18,83,661/- in India and around Rs. 3.5 crore outside India.
- e. Plaintiff is the owner of copyright in various original works that subsist in the Plaintiff's Film including but not limited to the story line, dialogues, theme, concept, plot, script, music, lyrics, character sketches etc. The plaintiff is entitled to copyright protection under Section 14 of the Copyright Act, 1957.
- f. In April, 2011, the plaintiff decided to remake the aforesaid Film in Tamil and Telugu languages. The plaintiff signed various artists and incurred an expenditure of over Rs.1 crore in payment to the artists for this project.

- g. In May, 2011, by way of abundant precaution, the plaintiff issued a public notice in Tamil and Telugu languages which stated that it had not sold the remake rights of the aforesaid Film in any language to any person and that the plaintiff remained the sole and exclusive owner of all its works including musical, literary, dramatic, cinematograph works.
- h. In November/December, 2011, through market sources, the plaintiff gained knowledge that the defendant no. 1 intended to remake the Plaintiff's Film in Telugu language. The defendant no. 1 was the producer of the Telugu remake of the Plaintiff's Film. The defendant no. 3 was the director and defendant no. 2 was the distributor of the Telugu remake of the Plaintiff's Film.
- i. On 31st January, 2012, the plaintiff issued a legal notice to the defendant no. 1, calling upon it to forthwith stop any plans for making a remake of any of the plaintiff's films. However, despite service, no response was received. The plaintiff assumed that the defendant no. 1 had paid heed to the plaintiff's legal notice.
- j. Subsequently, as the plaintiff learnt that the defendant no. 1, continued to pursue a project to remake the Plaintiff's Film in Telugu, the plaintiff issued a second legal notice dated 04th April, 2012 to the defendant no. 1 reiterating its objections and requesting the defendant no. 1 to cease and desist from making a remake of the Plaintiff's Film. However, once again, despite service, no response was received.

- k. On 27th January, 2013, the defendant no. 1 released the first trailer of the film titled JABARDASTH (**hereinafter referred to as “impugned film”**), which raised suspicions in the plaintiff's mind, because of its striking similarity with the Plaintiff's Film.
 - l. On 07th February, 2013, the plaintiff issued a third legal notice to the defendant no. 1 requesting a copy of the impugned film and the script to be provided to the plaintiff before it was released, in order to ascertain whether the impugned film was a copy and remake of the Plaintiff's Film. However, there was no response from the defendant no. 1.
 - m. On 22nd February, 2013, the impugned film was released across various screens in India, including New Delhi.
 - n. On watching the impugned film, the plaintiff found that the defendant's film was a blatant copy of the Plaintiff's Film.
 - o. The defendant no. 1 had also unlawfully sold the rights to release a dubbed version of the impugned film in Tamil language titled “DUM DUM PEE PEE” to the defendant no. 2 and same was scheduled to be released in the last week of March or first week of April, 2013.
8. Learned counsel for the plaintiff contended that the story, the manner in which the plot unfolded, and the treatment as well as expression given to the theme in the Plaintiff's Film had been blatantly copied in the impugned film. She submitted that the similarities between the Plaintiff's Film and the defendants' film were substantial and material in terms of theme, concept, plot, character sketches, story, script, form and expression etc.

She stated that the defendants' blatant copying of all the elements of the Plaintiff's Film amounted to copyright infringement. She further stated that a spectator or viewer of the impugned film who had also seen the Plaintiff's Film, would have an unmistakable impression that the defendants' film was a copy and/or reproduction of the Plaintiff's Film. She handed over the following table highlighting the similarities between the Plaintiff's Film and the defendants' film:-

S. No.	BAND BAAJA BAARAAT	JABARDASTH
1.	<i>Hero and his friend go to a random wedding and have free food there because cook at the wedding is a known guy (to Hero)</i>	<i>Hero and his friend go to a random wedding and have free food there because cook at the wedding is a known guy (to Hero's friend)</i>
2.	<i>Idea of heroine telling her parents that she wants to start her own business, become big and then only get married or else she will have to keep taking care of the house and her kids all her life.</i>	<i>Idea of heroine telling her parents that she wants to start her own business, become big and then only get married or else she will have to keep taking care of the house and her kids all her life.</i>
3.	<i>Heroine wants to start a wedding planning company</i>	<i>Heroine wants to start an event management (mostly wedding planning) company</i>
4.	<i>Hero & Heroine join leading wedding planner to learn business</i>	<i>Heroine considers joining leading wedding planner to learn business</i>

5.	<i>Hero offered the job first with the Leading wedding planner (chandha) and then hero convinces her to take heroine also</i>	<i>Hero gets the job first with the Leading wedding planner and then hero is forced to convince her to take heroine also</i>
6.	<i>Hero & Heroine quit and start their own wedding planning company</i>	<i>Hero and Heroine start their own event management company</i>
7.	<i>Known flower guy introduces a new cook instead of the earlier established cook</i>	<i>Known flower lady introduces a new cook instead of the earlier established cook.</i>
8.	<i>Heroine's father comes to the first wedding organized and meets the Hero</i>	<i>Heroine's father comes to the first event organized and meets the Hero</i>
9.	<i>Decision to plan small budget weddings to begin with</i>	<i>Decision to plan small budget events to begin with</i>
10.	<i>Hero & Heroine get big break when they convince a rich engaged couple and get their wedding planning contract</i>	<i>Hero & Heroine get big break when they convince a rich guy to plan his parent's 50th wedding anniversary</i>
11.	<i>Heroine falls in love with the Hero after the first big wedding</i>	<i>Heroine falls in love with the Hero after the first big event</i>
12.	<i>Heroine comes to know Hero not in love with her</i>	<i>Heroine comes to know Hero not in love with her</i>
13.	<i>Hero & Heroine part ways and start their individual wedding</i>	<i>Hero & Heroine part ways and start their individual</i>

	<i>planning companies</i>	<i>event management companies</i>
14.	<i>Both falter in their respective management due to the absence of the other.</i>	<i>Both falter in their respective management due to the absence of the other.</i>
15.	<i>Due to certain circumstances they are forced to work together again</i>	<i>Due to certain circumstances they are forced to work together again</i>
16.	<i>Hero asks the Heroine to forget the past and become business partners again</i>	<i>Hero asks the Heroine to forget the past and become business partners again</i>
17.	<i>Heroine already engaged to another guy in a foreign country</i>	<i>Heroine already engaged to another guy in a foreign country</i>
18.	<i>Hero & Heroine confess their love for each other</i>	<i>Hero & Heroine confess their love for each other</i>
19.	<i>Ainvai Ainvai hand movement dance step</i>	<i>Similar step in the first song</i>

9. Learned counsel for the plaintiff further contended that the reviews received by the impugned film validated and reinforced the fact that the defendants' film was a blatant copy of the Plaintiff's Film. Some of the reviews received by the defendants' film are reproduced hereinbelow:-

- (i) <http://timesofindia.indiatimes.com/entertainment/movie-review/18632561.cms>

We'll begin with a word of advice. If you've seen Band Baja BAARAAT, this one might seem like a much-dumbed-down-Tollywood adaption – remake is more like it actually, but since the filmmakers didn't tell us so, we'll trust their integrity and stick to adaptation for now – of the Ranveer-Anushka starrer.

As long as you don't expect this move to match the chutzpah of the original, you'll be able to see the funny side of it all. Can't help wondering had this move been made first, would it still have inspired BBB? We're afraid not.

- (ii) http://www.telugucinema.com/c/publish/moviereviews/jabardasth_feb212013.php

In her second film, JABARDASTH, she copied basic plot from the Anushka Sharma and Ranvir starrer Bollywood hit, Band Baaja BAARAAT (2010) and created her own concoction. This brew has turned out to be pretty bland. What we miss here is that ingenuity that she showed in her first film. We regularly see films that are copied from other movies blatantly, so we should not mull over that aspect much but the problem with JABARDASTH is that the director has tried to give her own 'version' to the line of Band Baaja BAARAAT, which ends up as neither here nor there.

10. Learned counsel for the plaintiff stated that the sale of the rights to release the Tamil dubbed version of the impugned film by the defendant no. 1 to the defendant no. 2 infringed the plaintiff's copyrights. She further stated that it also rendered ineffective the efforts of the plaintiff to make Telugu and Tamil remakes of the Plaintiff's Film, for which it had already taken irretrievable steps.

11. The plaintiff has filed its *ex parte* evidence by way of affidavit of Mr. Ramanarayan Ramaswamy, the Senior General Manager – Home Entertainment and Licensing of the plaintiff (PW1). In his affidavit, he has proved the following documents:

- a. Original DVD of the Plaintiffs Film as Ex.PW1/4;
- b. Agreement dated 27th May, 2009 for the engagement of Mr. Habib Fazal as screenplay and dialogue writer of the Plaintiff's Film as well as the agreement dated 10th June, 2009 for engagement of Mr. Manish Sharma as director of the

Plaintiff's Film, Music Composer Agreement dated 22nd January, 2010 between the plaintiff and Blue Production, Agreement dated 05th January, 2010 with Mr. Amitabh Bhattacharya as lyrics writer and Editor Agreement with Ms. Namrata Rao as Ex.PW1/5, Ex.PW1/7 to Ex.PW1/10, respectively;

- c. Extracts from the plaintiff's website announcing the release of the Plaintiff's Film as Ex.PW1/11;
- d. Website extract showing hundred days of the Plaintiff's Film running in theatres as Ex.PW1/15;
- e. The License Agreement dated 10th March, 2011 between the plaintiff and Multi Screen Media Private Limited as Ex.PW1/16;
- f. CA Certificate dated 01st March, 2013 for the Plaintiff's Film as Ex.PW1/17.
- g. Consultancy agreement between the plaintiff and Mr. Padam Kumar for Tamil remake of the Plaintiff's film as Ex.PW-1/19.
- h. Music composer agreement dated 21st December, 2011 between plaintiff and Mr. C. Dharan Kumar for the Tamil remake of the plaintiff's Film as Ex. PW1/20.
- i. Director agreement dated 21st March 2012 between plaintiff and Mr. A. Gokul Krishna as Ex. PW 1/21.
- j. Artist agreement dated 24th November, 2012 between plaintiff and Mr. G. Naveen Babu as Ex. PW 1/22.
- k. Legal notices dated 31st January 2012, 4th May 2012 and 7th February, 2013 as Ex. PW 1/23, Ex. PW 1/25 and Ex. PW 1/26.

1. Websites extract of press release showing details of plaintiffs remaking the Plaintiff's film in south India as Ex. PW 1/24(COLLY).
 - m. Websites extracts containing media reviews of the defendant's film showing its similarities with the Plaintiff's film as Ex. PW 1/29(COLLY).
12. Learned counsel for the defendant submitted that this Court did not have the territorial jurisdiction to deal with the present matter as the impugned film was conceived, written and directed in Hyderabad and no part of its preparation including post production work had taken place in New Delhi.
13. Per contra, learned counsel for the plaintiff submitted that this court had the jurisdiction to deal with the present matter as, the defendant's film was released pan India including Delhi.
14. In a similar case of copyright infringement being ***MRF limited V. Metro Tyres Limited, CS(COMM) 753/2017*** decided on ***01st July, 2019***, this Court has held that a film is recognised as being more or greater than the sum of its parts and copyright subsists in a 'cinematograph film' as a work independent of underlying works that come together to constitute it. Further, though the expression 'original' is missing in Section 13(1)(b) of the Copyright Act, 1957, yet the requirement of originality or intellectual creation is brought in through Sections 13(3)(a) and 2(d).
15. This Court also held that the expression "to make a copy of the film" in Section 14(d)(i) does not mean just to make a physical copy of the film by a process of duplication. Further, as the scope of protection of a film is at par with other original works, the test laid down in ***R.G. Anand v. M/s***

Deluxe Films and Ors. (1978) 4 SCC 118 would apply. Accordingly, this Court will have to compare “the substance, the foundation, the kernel” of the two films. The relevant portion of the judgment in **MRF limited V. Metro Tyres Limited** (supra) is reproduced hereinbelow:-

“60. Moreover, a ‘cinematograph film’ may not infringe any of its underlying works, namely, a literary, dramatic, musical or artistic work, but may nevertheless lack originality because it infringes another cinematograph film. In other words, in terms of Section 13(3)(a), a film must not be a copy of any other work, including any other film.

xxxx xxxx xxxx xxxx

82. *Consequently, this Court is of the view that ‘to make a copy of the film’ does not mean just to make a physical copy of the film by a process of duplication, but it also refers to another film which substantially, fundamentally, essentially and materially resembles/reproduces the original film. Accordingly, the blatant copying of fundamental /essential/distinctive features of the plaintiff’s advertisement on purpose would amount to copyright infringement. Consequently, the Court will have to compare “the substance, the foundation, the kernel” of the two advertisements to consider whether one was “by and large a copy” of the other and whether an average viewer would get an unmistakable impression that one work was a copy of the other.”*

(emphasis supplied)

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

17. This Court is further of the opinion that it has jurisdiction to decide the present case as the impugned film was released in Delhi too. This Court

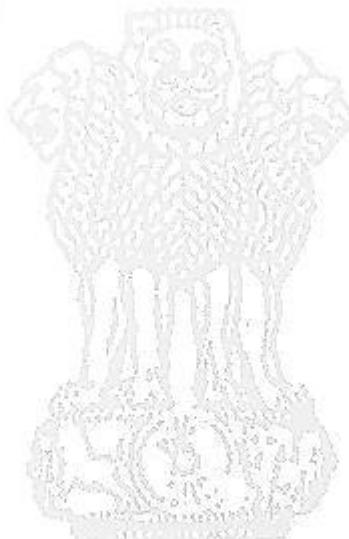
is also of the opinion that the defendants have no real prospect of defending the claim as their defence had been struck off and they have not denied the documents of the plaintiffs. In fact, the evidence of the plaintiff's has gone unrebutted.

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

MANMOHAN, J

JULY 08, 2019

js/rn



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