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ILR 2004 KAR 4530 : (2004) 24 AIC 689

BEFORE K. SREEDHAR RAO, J.

NRI Film Production Associates (P) Ltd.

Versus

Twentieth Century Fox Film Corporation and Another*

RFA No. 67/2004

Decided on August 18, 2004

(A) COPY RIGHT ACT, 1957 – SECTION 2(a)(V) – AMENDMENT OF SECTION 2(a)(v) – INCORPORATION OF CLAUSE (v) – Effect of – HELD – The true effect of amendment of Clause 2(a)(v) in the case of literary and dramatic works would apply only when there is marginal peripheral alterations and rearrangements – The amendment does not bring out any drastic change in the existing law, therefore the test of dissimilarities propounded by Supreme Court in R.G. Anand's case still holds the field.

(B) COPY RIGHT ACT, 1957 – INFRINGEMENT OF COPY RIGHT – SUIT FOR DECLARATION OF – QUESTION OF ACCESS – Whether it is a matter of inference or by direct proof – HELD – The question of access could be a matter of inference or by direct proof – When there is no similarity, the question of access to the work is inconsequential in law – On facts, further held – The question of access or otherwise has a little bearing in the present case, in view of the glaring dissimilarities which make "Independence Day" totally distinct and different from "Extra Terrestrial Mission".

(C) COPY RIGHT ACT, 1957 – SECTION 55 – REMEDIES FOR INFRINGEMENT OF A RIGHT – INJUNCTION, DAMAGES, ACCOUNTS ETC., – ON FACTS HELD – It is open to the plaintiff to seek damages. But in law the plaintiff is also entitled to the relief of accounts – But plaintiff cannot claim the relief of damages and accounts together.

Dismissing the Appeal, the Court

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Held :

The Indian Law as laid down in R.G. Anand's case, the English Law and the American Law on the subject of copyright in literary and dramatic works is unanimous in the view. There cannot be copy right over the ideas, theme, and the plot, lest it would stultify the growth and development of literary genius. But any idea, theme or a plot expressed with more vivid descriptive details of any subject by the author gives a copyright over such unique way of expression.

(Para 17)

The true effect of amendment of clause 2(a)(v) in the case of literary and dramatic works would apply only when there is marginal peripheral alterations and rearrangements. The amendment does not bring out any drastic change in the existing law, therefore the test of dissimilarities propounded by Supreme Court in R.G. Anand's case still holds the field. In that view I find the story and the film script in I.D. is totally distinct and different from E.T.M. The so called unique features of E.T.M. like President's involvement in war, the picturisation of effects of war, the presentation of concept of spaceship, energy shield could at the best be called an idea, but not a precise defined expression to confer copyright.

(Para 21)

In fact E.T.M. is only at the stage of film script, a reading material. Whereas I.D. is a visual material. The presentation and picturisation of ideas into events in a visual form involves technical skills and expertise of photography. The depiction of the events of nuclear missile attacks, the traffic jams, disruption of communications, devastating effects of the nuclear bombardment could get altogether a different photographic treatment varying from person to person. The photographic expression of the work in the film would itself constitute a copy right. Therefore, it cannot be said that the script of E.T.M.

if made a film will bear the similar presentation and effects.

(Para 23)

ASES REFERRED:

T PARAS

1. (1978) 4 SCC 118 : AIR 1978 SC 1613 -

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2. GA No. 2310/03 APO T No. 394/2003 with OS 145/2003 T No. 2/2003 -

(Re

Barbara Taylor Bradford v. Sahara India Entertainment Ltd.

3. *Barsha Henry v. M.G.M.*

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4. AIR 1981 A.P. 224 -

(Relie

Pillamarri Lakshmikantham v. Ramakrishna Pictures

ooks Referred:

The tritise 'Nimmer on Copy right' Vol. III, 1993

Sri A.Y.N. Gupta, Advocate for Appellant

Sri Udaya Holla & Terxes D. Ramina, Advocates for Respondents

JUDGMENT

SREEDHAR RAO, J.:—

The case is at the stage of admission. At the request and with the consent of both the parties, the appeal heard on merits for final disposal.

The appellant/plaintiff filed a suit for a declaration that the Movie Independence Day (I.D.) produced by the defendants is the infringement of the copyright of the film script Extra Terrestrial Mission (E.T.M.). Further seek an injunction against display of the film in any theatre or through a videocassette etc. both in India and world over. Further seek an enquiry into accounts of the film I.D. for assessing the compensation payable to the plaintiff for the tort of infringement.

2. The Managing Director of the Plaintiff Company claims to be the author of the film script E.T.M., acquired registered copyright in the year 1986. The plaintiff in the year 1993 had engaged Ms. Susan Schaefer, an Entertainment Attorney at U.S. for getting a financial investor as a co-producer for the film ETM. One Mr. Richard Garzilli a professional companion of Ms. Susan Schaefer was in the full time employment of the first defendant for some time. Mr. Richard Garzilli was also representing Mr. Roland Emmerich and Mr. Dean Devlin the authors of the film



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script I.D. in some other project as such there was a close professional and social relationship amongst the first defendant, Ms. Susan Schaefer, Mr. Richard Garzilli, Mr. Roland Emmerich and Mr. Dean Devlin. In that view the plaintiff contends that the authors of the script I.D. and the first defendant had access to the film script E.T.M. The film I.D.

produced by defendants is the plagiarised version of the E.T.M. amounting to infringement of the plaintiffs copyright. Hence the suit filed for the above reliefs.

3. Per contra the defendants stoutly denied the allegations of infringement of copyright and maintain that the film I.D. is totally distinct and different from the script E.T.M. hence seek dismissal of the suit.

4. The Trial Court comes to the conclusion that the film I.D. is totally different from the film script E.T.M. and that there is no infringement. Accordingly dismissed the suit.

5. The following points arise for consideration in this appeal.

- (1) Whether the plaintiff proves that the film I.D. infringes the copy right in film script E.T.M. the findings of the trial court that there is no infringement is contrary to law and evidence on record?
- (2) Whether the suit of the plaintiff for accounts to enable him to seek the relief of damages is in accordance with law?

6. The story line of the film script E.T.M. and I.D. in nutshell is narrated below for convenient reference and analysis.

E.T.M.

7. The script starts with the scene at a war ravaged Vietnam. One Diana a Vietnam citizen when subjected to sexual assault by an American soldier, Phil Talon the Army Captain of US rescues Diana for which act Diana feels beholden. In the later part of the story, love blossoms and they get married. Henceforth the scenes of the film shift to U.S. and Middle East. Diana and Phil Talon at U.S. will be working together for the rehabilitation of the Vietnam War affected children at US by a body called Vietnam Center.



Phil Talon is also tipped for Noble Peace Prize for his philanthropic acts.

8. Aliens descend an earth by a spaceship on a rescue goodwill mission. Phil Talon is a familiar personality to aliens. One Pilgrim the leader of the aliens informs Phil Talon of the impending nuclear blast conspired by Dr. Cain, a Christian Priest at the site of mosque at Jerusalem. If not prevented Pilgrim apprehends that the whole earth would be devastated, therefore requests Phil Talon to negotiate with the President of US for a preventive action. The President of US takes egoistic stand at the instance of Dr. Cain refuses to allow the alien interference in the affairs of the earth, directs them to leave at once. On refusal by the aliens directs a war against them. In the first round of the war the nuclear arsenal is substantially exhausted in vain. The aliens appear to be invincible. The President makes a tactical retreat, confer with the President of USSR, France etc. for a strategy to combat the aliens. The aliens however successfully prevent the nuclear holocaust at Jerusalem and successfully resist the US attack. In the second round of attack also the aliens prove invincible to US forces. The President becomes desperate and calls for a truce. The aliens having established their triumph would voluntarily get back.

I.D.

9. The film starts with a scene in the Central Control Room in the mid night hours. One of the junior scientists receives strange signals from the space indicating evil arrivals. The chief of the Control Room is informed. The situation gets warmed up in the control room. In the early morning, the President is informed about the dangerous signals received from the space. The President will have meeting with the military authorities and scientists to chalk out a strategy to resist alien invasion.

10. The people curiously congregate look upto the sky hopefully to receive friendly aliens but the aliens descend belligerently bombarding the buildings including Whitehouse and nuclear installations killing several innocent people. The space ships of a diameter of 15 miles descend on several important cities. A huge mother spaceship stationed in the

space quite at a distance



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controlling the small spaceships. The US Air force in vain attacks the aliens spaceships exhausting substantial nuclear arsenal. The President becomes desperate, recalls the forces for evolving a successful strategy.

11. The President and advisors hold secret meeting in Area 51. One of the pilots who had captured an alien brings it to Area 51. The President feels distressed and helpless in the matter. A Scientist accidentally hits an idea of implanting virus in the spaceship to make it vulnerable. The Scientist and the expert war pilot take the journey by an old captured spaceship, reach the mother spaceship, after some tense anxious movements successfully implant the virus. The President gets directly involved in the Ariel war as a pilot to attack the spaceship. The first round the attack would go in vain. The President without loosing hope tries to take a second chance much against the advice of his Officers. The virus in the round of attack would become active making spaceship fragile to attacks. Thus the mother spaceship and the small ones start crumbling by the attacks. The aliens get away from the earth. The entire episode takes place in two days. The last battle of the episode is made to coincide with the Independence Day of US to signify literally the triumph as yet another Independence Day from the aliens.

12. The appellant personally argued his case and listed out the following unique style of expressions in his script, which are adopted in I.D. amounting to infringement.

1. The President's direct involvement in the war and the President's presence in the last scene at the time of departure of the aliens are the unique aspects of the script ETM. The defendants witness also corroborates the contention that the Presidents direct involvement in the war is the specialty of the story.
2. The concept of energy shield, the picturesque vivid description of the impregnable capacity of the eneigy shield, the capacity to suck and let out the objects and persons intact, the capacity to diffuse the nuclear attacks preventing nuclear radiation are the unique features of the spaceships with energy shield in E.T.M. are adopted in I.D.



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3. The vivid and detailed expression of nuclear missiles fizzling out like broken balloons in E.T.M. are adopted in I.D.
4. The descriptive concept of spaceship, its movement from outer space prominently passing through moon with cloud covers is a novel expression in ETM. The descriptive effects of spaceship with dazzling lights descending on the earth focussing the beaming light from the bottom on the Whitehouse is again a special expression first of its kind in E.T.M., adopted in I.D.
5. The people of US in cheerfully welcoming the aliens with placards, the crowd going hanky-panky, the descriptive details of disruption of communications and transport are the novelty aspects of E.T.M. adopted in I.D.

13. The Counsel for the respondent pointed out the following dissimilarities to refute the contention of infringement of the copyright.

- (1) In E.T.M. the aliens visit is a goodwill mission to save the earth. The US President unlike a noble Samaritan refuse to see the good purpose. But on egoistic considerations directs a war to drive out the aliens. Whereas in I.D. the aliens visit is to conquer the earth. The US President boldly with good intention successfully

repulse the attack with his dedicated band of men.

- (2) The aliens in E.T.M. are portrayed as human beings, in I.D. they are grotesque with magnified insect face and overlapping features of octopus.
- (3) In E.T.M. the aliens would talk in human language but in I.D. they function only on telepathy.
- (4) The energy shields in I.D. have no capacity to suck and let out objects intact like in E.T.M.
- (5) In I.D. the aliens descend on earth with a war mood destroying the cities, bombarding the buildings, killing large number of people. But in E.T.M. it is totally other way.
- (6) The energy shields through out the story in E.T.M. are impregnable and aliens are invincible but in I.D. it is not so in the end.



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- (7) The US President remains desperate and feels humiliated through out in E.T.M. on account of invincible capacity of aliens but in I.D. the President is tenacious and triumphant in the war against aliens.
- (8) The aliens are noble, righteous minded and people friendly in E.T.M. but in I.D. they are wicked and ambitious to conquer the earth.

14. The Counsel for the respondent argued that the idea and portrayal of sequences like traffic jams, disruption of communication, dazzling effects of the nuclear missiles are hackneyed subjects of every scientific fiction and matters of common grasp. There is no novelty or uniqueness either in the idea or in expression. Invariably every author of a scientific fiction would conjure them as consequential concomitant effects as a matter of common grasp and "Scenes a Faire" which carry no copyright.

15. In the tritise "Nimmer on Copyright" in Vol. III, 1993 while dealing with the topic — Action — Substantive aspects at page 13-75 elucidates the doctrine of "Scenes a Faire" in the following words:

"(4) 'Scenes a Faire'. Bearing in mind the hoary wisdom of Ecclesiastes that there is nothing new under the sun, certain patterns and situations are bound to recur. The claim (and variations thereon) is often advanced that "the entire dramatic literature of the world can be reduced to some three dozen situations" *Schwartz v. Universal Pictures Co.* 85 F. Supp. 270 (S.D. Cal. 1949) So, for example, if two scenarios wish to treat the unprotected idea of police life in the South Bronx, for each it will be only natural to depict "drinks, prostitutes, vermin and derelict cars", juxtaposed against hard drinking Irish cops chasing fleeing criminals Judge Leon Yankwich has called such incidents "scenes a faire" i.e., "scenes which 'must' be done." That language is often invoked to immunize from liability similarity of incidents or plot which necessarily follow from a common theme or setting."

16. The Supreme Court in *R.G. Anand v. Delux Films*¹ has laid down the following testing



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guidelines to determine the infringement in paras 46 and 58 as follows:

"46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. There can be no copyright in an idea, subject-matter, themes, plots or historical







