

In the High Court of Judicature at Madras

Dated: 03.02.2015

Coram:

The Honourable Mr. Justice R.SUBBIAH

Application No.735 of 2014

and

Civil Suit No.598 of 2014

Mr.Shivaji Rao Gaikwad,
(also known as Mr.Rajinikanth),
18, Raghava Veera Avenue,
Poes Garden, Chennai-600 086.

.... Applicant/plaintiff

Vs.

M/s.Varsha Productions,
Rizvi Mansion Co-operative Society,
6th Floor, Flat No.602,
L.J.Road, Mahim West,
Mumbai-400 016.

.... Respondent/Defendant

Prayer:- The Original Application has been filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rules 1 & 2 and Section 151 of CPC praying to grant interim injunction restraining the respondent/defendant, by themselves, their directors, principal officers, successors-in-business, assigns, servants, agents, distributors, advertisers or anyone claiming rights through them, from using the applicant's/plaintiff's name/image/caricature/style of delivering dialogues in the forthcoming project/film titled 'Main Hoon Rajinikanth' or in any of the forthcoming projects/films in any manner whatsoever amounting to infiltration of the applicant's/plaintiff's personality rights by such unauthorised use, pending disposal of the suit.

For Applicant : Mr.P.S.Raman, Senior Counsel
for Mr.Arun C.Mohan and Ms.S.Suba Shiny

For Respondent : Mr.Thoma T.Jacob

ORDER

This Original Application has been filed by the applicant/plaintiff under Order XIV Rule 8 of the High Court Original Side Rules read with Order XXXIX Rules 1 & 2 of C.P.C., seeking for grant of interim injunction restraining the respondent/defendant, by themselves, their directors, principal officers, successors-in-business, assigns, servants, agents, distributors, advertisers or anyone claiming rights through them, from using the applicant's/plaintiff's name/image/caricature/style of delivering dialogues in the forthcoming project/film titled 'Main Hoon Rajinikanth' or in any of the forthcoming projects/films in any manner whatsoever amounting to infiltration of the applicant's/plaintiff's personality rights by such unauthorised use, pending disposal of the suit.

2.The applicant herein is the plaintiff and the respondent herein is the defendant in the suit. For the sake for convenience, the parties are referred to as per their rankings in the suit.

3.The plaintiff has filed the suit for the following reliefs_

(a)a permanent injunction restraining the defendant by themselves, their Directors, principal officers, successors-in-business, assigns, servants, agents distributors, advertisers or anyone claiming through them from in any manner using the Plaintiff's name/image/caricature/style of delivering

dialogues in the forthcoming project/film titled 'Main Hoon Rajinikanth' or in any of the forthcoming projects/films in any manner whatsoever amounting to infringement of copyright;

(b)a permanent injunction restraining the Defendant by themselves, their Directors, principal officers, successors-in-business, assigns, servants, agents, distributors, advertisers or any one claiming through them from using the plaintiff's name/image/caricature/style of delivering dialogues in the forthcoming project/film titled 'Main Hoon Rajinikanth' or in any of the forthcoming projects/films in any manner whatsoever amounting to infiltration of the Plaintiff's personality rights by such unauthorised use;

(c) a permanent injunction restraining the Defendant by themselves, their Directors, principal officers, successors-in-business, assigns, servants, agents, distributors, advertisers or any one claiming through them from using the plaintiff's name/image/caricature/style of delivering dialogues in the forthcoming project/film titled 'Main Hoon Rajinikanth' or in any of the forthcoming projects/films content in any manner whatsoever so as to misrepresent and to cause deception in the minds of public leading to passing off;

(d)the defendant be ordered to remove all references / press releases / videos / posters / advertisements / content / publicity materials containing the Plaintiff's name/image/caricature/style

of delivering dialogues from all websites, television channels, radio channels, newspapers and/or other modes of advertisement in any other modes of electronic and/or print media in respect of its forthcoming project/film titled 'Main Hoon Rajinikath'.

(e)the defendant be directed to pay the plaintiffs as compensatory and punitive damages a sum of Rs.25,00,000/- for unauthorized use of the plaintiff's name/image/caricature/style of delivering dialogues;

(f)for costs of the suit;

4.The case of the plaintiff, in brief, is as follows_

4-1.The plaintiff is a famous and well acclaimed actor in the Indian film industry for the past several decades. The plaintiff is regarded as a cultural icon across the world and has been acknowledged as one of the leading actors in the country. The plaintiff's irrefutable acting ability, charisma, distinct personal style, mannerisms and stylised delivery of dialogue in films have contributed to his mass popularity and appeal. The plaintiff has also been bestowed with several awards nationally and internationally, besides recognition being conferred by various governments and trade bodies for his contribution to the arts and culture. It is further case of the plaintiff that he has been repeatedly referred to as the most popular Indian actor by the media across the world, and his wide-spread fan base has been universally acknowledged to be one of the largest in the world. Many also cite reasons for the plaintiff's popularity as coming from his

larger-than-life appearance in many films, supported by gravity-defying stunts and charismatic expressions/dialogues which often attain cult status, whilst preferring to maintain humility and simplicity in real-life.

4-2.Despite the plaintiff being exceptionally well known and enjoying the adoration and recognition of his fans across the globe, he has deliberately chosen not to authorise any biopic featuring him or create any work based upon his personal self/personality. This is due to the fact that the plaintiff is personally against such gross commercialization of his name and reputation. This has been the plaintiff's personal choice for the past several decades.

4-3.It is further stated by the plaintiff that irrespective of the above stance consciously adopted by him, he has attained the status of a well known personality across the globe and particularly in India and countries having communities of Indian origin. Any use/misuse of the Plaintiff's name/image/caricature/style of delivering dialogues amounts to infringement of his personality right and copyright arising thereof. The plaintiff being a well known celebrity, has the right to command and control the use of his name, image, likeness or other unequivocal aspects of his distinctiveness. Any misuse of his name/image/caricature/style of delivering dialogues also amounts to infringement of the personality right vested with the Plaintiff besides amounting to acts of passing off.

4-4.It is further case of the plaintiff that any misuse of his name/image/caricature/style of delivering dialogues would also cause

considerable confusion amongst the trade and public, who would seek to view any projects associated with him or using his name, image or likeness entirely on the basis of its supposed approval by him. The plaintiff has been acknowledged for the widespread and unconditional passion/hysteria generated amongst his fans and admirers across the world by his mere appearance on-screen.

4-5. While so, recently, the plaintiff has come across various press releases, video releases, web articles and posters about the defendant's forthcoming feature film titled 'Main Hoon Rajinikath'. The various press releases, video releases, web articles, posters and information from other sources about the feature film 'Main Hoon Rajinikath' reveal that the defendant has exploited the superhero image portrayed by the plaintiff in various movies, for the benefit of the defendant, by embodying the same in the defendant's forthcoming feature film, which has scenes of immoral nature. The defendant has not approached the plaintiff or obtained his consent or permission either written or oral to use his name/caricature/image/style of delivering dialogue in the defendant's forthcoming feature film. According to the plaintiff, the use of his name/image/caricature/style of delivering dialogues without his consent amounts to violation of the personality right and copyright solely vested with him. The defendant has unauthorizedly used the plaintiff's name/image/caricature/style of delivering dialogues to promote their forthcoming feature film to illicitly derive benefit and the same amounts to

causing confusion and deception amongst the trade and public and further consequential acts of passing off. Further, the defendant's forthcoming feature film has scenes of immoral nature, which is entirely antithetical to the nature of films chosen by the plaintiff and his image/reputation amongst the public. In having his name/image/caricature being associated with such feature film of immoral and promiscuous nature, the plaintiff would be subject to defamation, slander and gross damage to vast reputation/goodwill amongst the public across the world and the Indian film industry, which has been built over the hard work of several years by the plaintiff. The plaintiff, in order to resolve the same amicably, caused a cease and desist notice dated 15.07.2014 on the defendant to restrain from violation of the rights of the plaintiff. But, the defendant continues with its unlawful activities.

4-6. The defendant has knowingly used the plaintiff's name/image/caricature/style of delivering dialogues without any permission or authorization whatsoever. The defendant has deliberately used the plaintiff's name/image/caricature/style of delivering dialogues in its forthcoming feature film only with a *mala fide* intention to derive illicit benefits based upon the goodwill emanating from the well known personality status of the plaintiff. The unauthorised use of the plaintiff's name/image/caricature/style of delivering dialogues in the defendant's forthcoming film amounts to infringement of copyright, infiltration of personality right and passing off besides being a gross violation of privacy, being defamatory, slanderous and causing considerable confusion amongst

the public, as to the association between the plaintiff and the defendant. A *prima facie* case is in favour of the plaintiff. The plaintiff is a man of high esteem in the society, more particularly in the cine industry. The plaintiff through his hard work and persistence has attained immense knowledge and goodwill that even a child would relate the name "Rajinikanth" only with that of the plaintiff and none else. The defendant in its forthcoming feature film 'Main Hoon Rajinikanth' has used the name/image/caricature/style of delivering dialogues of the plaintiff, without the plaintiff's consent or permission in any manner whatsoever and is trying to make unlawful benefits out of the same. Hence, the present suit has been filed by the plaintiff.

4-7. Pending the suit, the plaintiff has filed the present application seeking interim injunction as stated supra.

5. This Court, by order dated 17.09.2014, has granted an order of interim injunction and ordered notice to the respondent/defendant.

6. Thereafter, on appearance, the defendant has filed a counter. The sum and substance of the averments made in the counter filed by the defendant are as follows_

The film produced by the defendant namely 'Main Hoon Rajinikanth' is not a biopic of the plaintiff or a film based on the life or any event of the plaintiff. The defendant has not put the plaintiff in bad light. The defendant has not put the plaintiff's image/caricature/style of delivering

dialogues/film sequence/song/tune in the forthcoming project titled 'Main Hoon Rajinikanth'. In the movie 'Main Hoon Rajinikanth', the defendant has not made even a certain amount of fabrication to pass off that the film 'Main Hoon Rajinikanth' has got something to do with the plaintiff. It is further stated by the defendant that even the defendant's casting is not controversial or confusing to bring in similarity in looks nor is there a step to portray any characteristics played by the plaintiff in the films acted upto date nor have they portrayed anything from his real life. It is agreed by the defendant that the plaintiff's illustrious career made his name sufficiently recognizable in the entertainment and movies spheres in India and around the World. The defendant is not doing anything in bad faith to divert attention that the plaintiff has earned in the film world. It is further stated by the defendant that the only place where the plaintiff has anything to do with the movie is in the title 'Main Hoon Rajinikanth', which is a common / non-copyrightable name, which also happens to be the first name of the protagonist in the movie. The protagonist's full name in the movie is 'Rajinikanth Rao'. Nowhere in the affidavit or in the plaint, the plaintiff has stated that he has seen the film 'Main Hoon Rajinikanth' nor has authentic and reliable source/information that the film 'Main Hoon Rajinikanth' or any part of it has infringed into his personality rights and other rights. The cause of action seems to have been accumulated on mere apprehension and on unreliable source of information taken from the internet, which has been generated by the third party elements beyond the control of the defendant. The

defendant denied that the forthcoming feature film titled 'Main Hoon Rajinikanth' had exploited the superhero image portrayed by the plaintiff in various movies by illustrating the same for the benefit of the defendant. The alleged film nowhere reveals or depicts the personal life or the personality of the plaintiff to ridicule or contempt his valuable reputation. The film 'Main Hoon Rajinikanth' does not have scenes depicting the character of the plaintiff, which are immoral as alleged by the plaintiff. Even the Central Board of Film Certification has already given its certification to release the film. The film 'Main Hoon Rajinikanth' is in no way related to the plaintiff, his identity, life style, voice, style of delivering dialogue, likeliness or other aspects of his personae, caricature, without any parody. The defendant denied that the film has scenes of immoral nature of defamatory, slander and caused gross damage to the reputation/goodwill of the plaintiff amongst the public. It is further denied by the defendant that the defendant used the name/image/caricature and style of delivering dialogues of the plaintiff in their forthcoming film 'Main Hoon Rajinikanth' with malice intention to derive illicit benefits amounting to infringement of copyright, infiltration of personality rights and passing off, besides gross violation of privacy being defamatory, slanderous and causing considerable confusion amongst the public and the plaintiff has suffered considerable embarrassment due to queries seeking his alleged shift instance by allowing others to use his image for movies of low quality and immoral nature. There is no potential that the film might violate laws, person's name or image which is being used in a

defamatory manner. There is no *malafide* and dishonest intention which can be implied from the film since the defendant did not seek to derive any association, relationship or affiliation with the plaintiff. The film was never promoted in such a way of creating the false impression that the movie is some way related to the plaintiff or his personal life. The *prima facie* ingredients of passing off or misappropriation of plaintiff's personality is not made out in this case since there is no likelihood of confusion that the film portrays the plaintiff. The film does not defame or invade the privacy and the goodwill of the plaintiff, inflicting any damage upon his marketable reputation, name or likeness and it has no close proximity to the plaintiff's image. In the plaint, the plaintiff has stated that a cease and desist legal notice dated 15.07.2014 was sent to the defendant; but the said statement is wrong; the defendant has not received any notice from the plaintiff; such a statement has been made by the plaintiff under wrong advice. The defendant has never attempted to take away the plaintiff's right of privacy guaranteed under Articles 19 & 21 of Indian Constitution. Thus, the defendant sought for dismissal of the above Original Application.

7.The learned senior counsel appearing for the plaintiff submitted that the plaintiff is a famous and well acclaimed cine actor and he is a well known celebrity. While so, in order to make undue commercial gain, the defendant has produced the feature film by using the name of the plaintiff titled as 'Main Hoon Rajinikanth'. In this regard, the learned senior counsel

appearing for the plaintiff has drawn the attention of this Court to the advertisement Screenshot of the defendant's feature film 'Main Hoon Rajinikanth', downloaded from several websites, and submitted that in the said Screenshot, the caricature of the plaintiff was used by the defendant stating him as *CBI Officer, Stupid, Part Time Contract Killer and Moron*. The learned senior counsel appearing for the plaintiff has also invited the attention of this Court to a downloaded website page and submitted that it could be seen from the downloaded website page that it has been titled as '*Hot Kavita Radheshyam As Sex Worker For Rajinikanth*'. Thus, the learned senior counsel appearing for the plaintiff submitted that the image and reputation of the plaintiff amongst the public would get spoiled by the defendant, if the movie were to be released carrying the name of Rajinikanth in the title.

8. The learned senior counsel appearing for the plaintiff would further submit that the film produced by the defendant carrying the name of *Rajinikanth* in the title would cause gross damage to the goodwill of the plaintiff amongst the public across the world and particularly, in the Indian film industry, which has been built by the plaintiff by hard work over several years. In this regard, the learned senior counsel appearing for the plaintiff has also invited the attention of this Court to various printouts from several websites regarding the contents of the defendant's feature film 'Main Hoon Rajinikanth', and submitted that the contents in the said printouts from the

websites would show that the defendant has misused the plaintiff's name and infringed the plaintiff's personality right and copyright. In this regard, the learned senior counsel appearing for the plaintiff, by referring the press interview given by the Director of the film 'Main Hoon Rajinikanth', submitted that the Director has specifically stated that the movie is a tribute to the plaintiff. Thus, the learned senior counsel for the plaintiff submitted that having qualified the movie as a tribute to the plaintiff, the Director of the defendant's film has sent a signal to the public as though the movie has some reference to the plaintiff and inclined upon the plaintiff's reputation and expectation of the plaintiff's fans. Therefore, according to the learned senior counsel for the plaintiff, the interim injunction granted by this Court has to be made absolute. In support of his contention, the learned senior counsel has relied upon the following decisions_

i) ICC Development (International) Ltd., Vs. Arvee Enterprises and another – 2003 (26) PTC 245.

ii) Titan Industries Ltd., Vs. Ramkumar Jewellers – MANU/DE/2902/2012

iii) Star India P.Ltd. Vs. Leo Burnett (India) P. Ltd., - 2003 (270) PTC 81

iv) Mr. Arun Jaitley and Network Solutions P.Ltd., - 2011(47) PC 1

v) Ms. Barkha Dutt Vs. Easyticket – Case

No.D2009-1247

vi) Sonu Nigam Vs. Amrik Singh (alias Mr.Milka Singh) and another – Suit No.372 of 2013.

9.Apart from the above, the learned senior counsel appearing for the plaintiff has also submitted that the plaintiff has got personality right as a celebrity and if the defendant is allowed to use the name of the plaintiff in their movie 'Main Hoon Rajinikanth', which has many immoral scenes, it would amount to infiltration of the plaintiff's personality right. In this regard, the learned Senior Counsel appearing for the plaintiff has also relied upon the following judgments delivered by the courts in foreign countries_

(i)505 SE 68–69 LRA 101 – Pavesich Vs. New England Life Ins. Co.

(ii)694 F2d 674 – Martin Luther King Vs. AM.Heritage Prod

(iii)849 F2d 460 – Midler Vs. Ford Motor Co

(iv)122 Misc. 2d 603 – Onassis Vs. Christian Dior

(v)17 OR 2d 425 – Athans Vs. Canadian Adventure Camps Ltd

10.Opposing the submissions made by the learned senior counsel appearing for the plaintiff, the learned counsel appearing for the defendant submitted that the film produced by the defendant viz., *Main Hoon*

Rajinikanth is not a biopic of the plaintiff. Similarly, the contents of the film have nothing to do with the plaintiff. It is further submitted by the learned counsel appearing for the defendant that the only place where the plaintiff has anything to do with the movie is in the title 'Main Hoon Rajinikanth', which is a common / non-copyrightable name, which also happens to be the first name of the protagonist in the movie; the protagonist's full name in the movie is 'Rajinikanth Rao'; therefore, the same is in *bone fide* use in the film. Further, the learned counsel appearing for the defendant submitted that the downloaded websites pages relied upon the learned senior counsel appearing for the plaintiff were hosted by some other third parties and not by the defendant; therefore, the contents in the said website pages will not have any bearing in deciding the issue involved in this case. With regard the reliance placed by the learned senior counsel appearing for the plaintiff on the press interview given by the Director of the impugned movie, wherein the Director had stated that the movie is a tribute to the plaintiff, it is the reply of the learned counsel appearing for the defendant that even assuming for a moment that the Director of the movie had stated so; he had not only given tribute to the plaintiff but to many other thespians of the film industry; however, the defendant denies giving this news. Further, it is contended by the learned counsel appearing for the defendant that the defendant cannot be held responsible for any write-up written falsely by some third parties in the website pages.

11. Further, the learned counsel appearing for the defendant has also made a detailed argument on the various judgments relied upon by the learned senior counsel appearing for the plaintiff and submitted that the said judgments relied upon by the learned Senior counsel for the plaintiff, cannot be made applicable to the present facts of this Case. In support of his contention, the learned counsel appearing for the defendant relied upon the judgment reported in **CDJ 1990 SC 365 (Wander Limited and another Vs. Antox India)** and submitted that in the said judgment the Hon'ble Supreme Court has held that an infringement action is available where there is violation of specific property right acquired under and recognised by the statute. Whereas in the instant case, the plaintiff claimed a right called "Personality Right" which does not even have a definition and this particular property right is not recognised by any statute in India; on this ground alone, the case of the plaintiff has to be rejected.

12. Further, the learned counsel appearing for the defendant submitted that assuming otherwise even if the plaintiff qualifies in the prevalent statutes, he should be seeking the same under the Trade Mark Act and the Copyright Act. Section 17 of the Copyright Act states that only the first owner can claim copyright and would be entitled to a license of copyright. So far as the name 'Rajinikanth' is concerned, nobody being able to give definite knowledge of when the name came into inception and by whom; this question would prove that the same is in public domain for long. It is further

submission of the learned counsel appearing for the defendant that the name 'Rajinikanth' has been used in different movies on several occasions. Hence, no one can claim exclusivity as regards the material in public domain. In this regard, the learned counsel appearing for the defendant relied upon the judgment reported in **CDJ 2007 SC 1395 (M/s.Eastern Book Company & others Vs. D.B.Modak & another)** and submitted that the name 'Ranijikanth' is a common name and there cannot be any monopoly in the name.

13.That apart, the learned counsel appearing for the defendant relied upon Section 35 of the Trade Marks Act and submitted that *bonafide* usage of the name is a saving for anybody under the Act, even if the mark or name is registered and belongs to someone; in the instant case, the plaintiff has not sought for exclusivity by pursuing any registration. In this regard, the learned counsel appearing for the defendant relied upon the judgment reported in **CDJ 2014 SC 643 (Precious Jewels & another Vs. Varun Gems)**.

14.The learned counsel appearing for the defendant has also invited the attention of this Court to an Article in the Missouri Law Review, Volume 55, Issue-I, Winter-1990, which scrutinies various case laws pronounced by the Courts in United States of America on the issue of unauthorised use of Celebrity name in the Movie Title, which is relevant to the instant case. In the said Article, the author, after discussing the case laws of various courts in

United States of America, stated that a celebrity whose name is used in the title of a movie without the celebrity's permission will find it very difficult to get an injunction; to recover under the right of publicity, the celebrity must show that the title is 'wholly unrelated' to the movie, or that the title is actually a 'disguised commercial advertisement for the sale of goods or services'.

15. The learned counsel appearing for the defendant would submit that the film 'Main Hoon Rajinikanth' was announced in January-2014 by the defendant and thereafter, much publicity was made all over the internet and on movie magazines and papers. The plaintiff did not make any attempt to contact the defendant to stop the use of the name or content or did he make statements to the effect to any newspapers or interviews. In fact, the plaintiff waited till the film was certified by the Censor Board and was to be released on 28.09.2014 and the plaintiff has filed the present suit at the very last moment. The learned counsel appearing for the defendant by inviting the attention of this Court to Section 38 of the Specific Performance Act, submitted that perpetual injunction cannot be granted from the plaintiff and the contents in the affidavit as it does not qualify the conditions of the section. Knowingly or unknowingly the plaintiff has filed the suit for damages and has quantified it. Since the plaintiff has made a claim for damages quantifying it, he is not entitled for a perpetual injunction. When the perpetual injunction cannot be granted, there cannot be an interim injunction.

16. Apart from the above submissions, the learned counsel for the defendant has also submitted that the application is liable to be dismissed on the ground of suppression of material fact that the defendant has not received any notice from the plaintiff. Without any notice to the defendant, the plaintiff has obtained an order of interim injunction from this Court, by making misrepresentation. According to the learned counsel for the defendant, since the interim injunction order was obtained by the plaintiff by making misrepresentation, the interim injunction is liable to be vacated. In this regard, the learned counsel appearing for the defendant, by drawing the attention of this Court to the plaint and the affidavit of the plaintiff filed in support of the interim injunction application, submitted that in Para 12 of the Plaint and in para 8 of the affidavit of this application, the plaintiff has stated that a cease and desist notice dated 15.07.2014 was sent to persuade the defendant from carrying on with their infringement; but, the said paragraphs do not suggest that the notice was received by the defendant or returned un-served and the same are silent on this issue. The learned counsel appearing for the defendant would submit that no such notice was sent to the defendant by the plaintiff's counsel at the instance of the plaintiff and the same has been fabricated for the case. At the time of hearing the case, the learned counsel for the plaintiff brought to the Court the Returned Cover which was not there at the time of filing the suit. In this regard, the learned counsel appearing for the defendant has also invited the attention of this

Court to the Notice dated 15.07.2014 and submitted that in the said notice the Advocate for the plaintiff had stated that the movie "Kochaidiyan" is yet to be released, which is highly impossible thing on 15.07.2014 as the said movie had already been released during the month of April-2014 itself, which fact would show that the notice was hastily prepared by the plaintiff after filing the suit. It is further submitted by the learned counsel appearing for the defendant that the plaintiff and his counsel, in their haste to commit this mischief did not notice the error, which they are committing; hence, the pleading of Case Desist Notice having been sent is false and fabricated and it amounts to perjury and the plaintiff has willfully misled the Court to grant an ad-interim injunction. Therefore, the interim injunction order is liable to be vacated. In this regard, the learned counsel appearing for the defendant relied upon the judgments reported in **CDJ 2012 SC 729 (Kishore Samrite Vs. State of U.P.)**.

17. By way of reply, the learned senior counsel appearing for the plaintiff submitted that it is incorrect to state that the cease and desist notice dated 15.07.2014 has been created by the plaintiff for the purpose of this case. In fact, the plaintiff had sent notice dated 15.07.2014 to the defendant, through registered post and it is the defendant, who avoided to receive the notice. In this regard, the learned Senior Counsel appearing for the plaintiff has also produced the returned postal cover along with the postal receipt. The learned Senior Counsel appearing for the plaintiff would submit

that in the returned postal cover an endorsement was made to the effect that 'not known'. When the Court Notice and Private Notice in the interim injunction application were sent to the defendant, the same were received by the defendant at the same address. Therefore, according to the learned Senior Counsel appearing for the plaintiff, the defendant cannot state that the interim injunction order was obtained by the plaintiff on misrepresentation.

18. Further, with regard to the submissions made by the learned counsel appearing for the defendant on legal grounds, the learned Senior Counsel appearing for the plaintiff submitted that the submissions made by the learned counsel for the defendant based on the provisions of the Copyright Act and Trade Marks Act, cannot be made applicable to the facts of this case. The plaintiff has only claimed infringement of copyright as the plaintiff learnt through reliable sources that the impugned movie 'Main Hoon Rajinikanth' contained the plaintiff's name/image/caricature/style of delivering dialogues and hence, to prevent such violation, the plaintiff has sought for relief of copyright. It is further submitted by the learned senior counsel appearing for the plaintiff that the plaintiff has specifically sought for infiltration of personality right and the Courts in India have also recognized personality rights in name and it is governed by law of Tort under the Common Law. The learned senior counsel appearing for the applicant would further submit that though the defendant pleads that there is no reference

about the plaintiff in the movie, in every press interview given by the Director of the impugned movie, he has specifically stated that the movie is a tribute to the plaintiff. Further, all the documents produced by the plaintiff and the downloaded website pages would clearly prove the *mala fide* intention of the defendant beyond any reasonable doubt. Thus, the learned Senior Counsel appearing for the plaintiff sought for making the interim injunction order absolute.

19. Heard the submissions made on either side and perused the materials available on record.

20. It is the main defence of the learned counsel for the defendant that the plaintiff is claiming his right called "Personality Right", which does not even have a definition under any statute. The personality right has not been recognized under statute in India. It is the further contention of the learned counsel appearing for the defendant that Section 17 of the Copyright Act states that only the first owner can claim copyright and would be entitled to a licence of copyright; so far as the name 'Rajinikanth' is concerned, nobody being able to give definite knowledge of when the name came into inception and by whom; further, the name 'Rajinikanth' has been used in different movies on several occasions; hence, no one can claim exclusivity as regards the material in public domain.

21.I find that though there is no definition for the personality right under any statute in India, as contended by the learned Senior Counsel appearing for the plaintiff, the Courts in India have recognized the personality right in the name, in various judgments. In this regard, reliance could be placed in some of the judgments.

In ***ICC Development (International) Ltd., Vs. Arvee Enterprises and another – 2003 (26) PTC 245*** it has been held as follows_

"The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice, etc., An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event in question, that made the individual famous, nor in the corporation that has brought about the organization of the event. Any effort to take away the right of publicity from the individuals, to the organiser (non-human entity) of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolised. The right of Publicity vests in an individual and he alone is entitled to profit from it. For example if any entity, was to use Kapil Dev or Sachin Tendulkar's name/persona/indicia in connection with the 'World Cup' without their authorization, they would have a valid and enforceable cause of action."

In ***Titan Industries Ltd Vs. Ramkumar Jewellers – MANU-DE/2902/2012***, it has been observed as follows_

"No one was free to trade on another's name or appearance and claim immunity.

...

Validity : The plaintiff owns an enforceable right in the identity or persona of a human being.

Identifiability : The Celebrity must be identifiable from defendant's unauthorized use.

Infringement of right of publicity requires no proof of falsity, confusion, or deception, especially when the celebrity is identifiable. The right of publicity extends beyond the traditional limits of false advertising laws."

From a reading of the above said judgments, I am of the opinion that the personality right vests on those persons, who have attained the status of celebrity. In fact, in the present case, it has been categorically admitted by the defendant himself in the counter affidavit that the plaintiff is a well acclaimed actor with high reputation and he is a doyen of the film industry in India. Therefore, the defendant now cannot say that the name 'Rajinikanth' is a common name and as such it does not refer to the plaintiff alone. A celebrity must be identifiable from defendant's unauthorized use.

Infringement of right of publicity requires no proof of falsity, confusion, or deception, especially when the celebrity is identifiable.

22. In the instant case, on seeing the title of the impugned movie, it could be easily inferred that the public perspective about the impugned movie appears to be only with reference to the plaintiff herein alone and not connected to any other person, which is evident from the website pages hosted by various persons making comments on the plaintiff with regard to the title of the impugned movie. Though the learned counsel appearing for the defendant contended that the defendant cannot be held responsible for the comments made in the internet website pages, the comments made in the internet website pages would go to prove that on seeing the title of the impugned movie, the name of the plaintiff alone gets etched in the minds of the persons who come across the advertisement depicting the title of the movie. Therefore, the printout websites pages produced by the plaintiff would clearly show that the plaintiff could be easily identifiable by others from the defendant's unauthorized use of the plaintiff's name in the impugned movie 'Main Hoon Rajinikanth'. Therefore, the contention of the learned counsel for the defendant that the contents in the website pages and the contents in the movie do not refer the plaintiff, cannot be accepted. In this regard, reference could be placed in some more judgments. In the judgment reported in **2003 (270) PC 81 [Star India P. Ltd., Vs. Leo Burnett (India) P. Ltd]**, the Bombay High Court has held as follows_

“It is necessary for character merchandizing that the characters to be merchandized must gain some public recognition that is, achieved a form of independent life and public recognition for itself independently of the original product or independently of the milieu/area in which it appears.”

In the judgment delivered in **Case No.D2009-1247 (Ms.Barkha Dutt Vs. Easyticket]**, it has been held by the World Intellectual Property Organizations (WIPO), the international agency governing internet domains, that an unauthorized use of a famous person's name is not a *bonafide* use and if such name is used to lure users, it does not confer rights or legitimate interests on the infringer and it has been further held that the right to commercially use or exploit one's own name, vests with the person who has worked to create the fame and can lawfully restrict any other third party from exploiting that fame for commercial purposes.

23.From the reading of the above said judgments, it is seen that if any person uses the name of a celebrity without his/her permission, the celebrity is entitled for injunction, if the said celebrity could be easily identified by the use of his name by the others. As observed earlier, in the instant case, on seeing the name of *Rajinikanth* in the tile of the impugned movie, the persons, who are coming across the tile of the impugned movie, are

identifying the name only with the plaintiff herein, which is evident from the website pages hosted by different persons. Therefore, in my opinion, even assuming for a moment that the impugned movie is not a biopic of the plaintiff, since the name found in the title of the impugned movie is identifiable only with the plaintiff, who happens to be a celebrity and not with any other person, the defendant is not entitled to use the said name without the permission of the plaintiff/celebrity, particularly when he had chosen to advertise the movie with a title '*Hot Kavita Radheshyam As Sex Worker For Rajinikanth*'.

24.It is yet another submission of the learned counsel for the defendant that the present application is liable to be dismissed since the interim injunction order has been obtained by the plaintiff by making misrepresentation as if a notice dated 15.07.2014 was sent to the defendant before filing the suit, but actually no such notice was sent to the defendant, however, I find from the returned postal cover and the postal receipt produced by the learned senior counsel for the plaintiff that actually the said notice was sent to the defendant, but the defendant refused to receive the said notice. Therefore, I am not inclined to accept the submission made by the learned counsel for the defendant that by making misrepresentation, interim order was obtained by the plaintiff.

25.For the foregoing reasons, I am of the opinion that the plaintiff has

made out a *prima facie* case for granting interim injunction. Hence, the interim injunction granted by this Court is made absolute.

03.02.2015

Internet : Yes / No

Index : Yes / No

SSV

S.SUBBIAH, J.

SSV

Pre-delivery order
in

O.A.No.735 of 2014
in
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