

Calcutta High Court

Shree Venkatesh Films Pvt. Ltd vs Vipul Amrutlal Shah & Ors on 1 September, 2009

Author: Pinaki Chandra Ghose

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present :

The Hon'ble Mr. Justice PINAKI CHANDRA GHOSE

And

The Hon'ble Mr. Justice I. P. MUKERJI

G.A. No. 2153 of 2009
A.P.O.T. No.309 No.2009
G.A. No.2064 of 2009
C.S. No. 219 of 2009

SHREE VENKATESH FILMS PVT. LTD.

Versus

VIPUL AMRUTLAL SHAH & ORS.

For the Appellant : Mr. Anindya Mitra, Sr. Advocate,
Mr. Tilak Bose, Advocate,
Mr. Abhrajit Mitra, Advocate,
Mr. Debnath Ghose, Advocate,
Mr. Jishnu Chowdhury, Advocate,
Mr. Soumya Roy Chowdhury, Advocate,
Mr. Satyabrata Chakraborty, Advocate,

For the respondent : Mr. S.N. Mookherjee, Sr. Advocate,

No.1 Mr. Ranjan Bachawat, Advocate,

For the respondent : Mr. Sayan Roy Chowdhury, Advocate,
No.2 Mr. S. Dasgupta, Advocate,
Mr. Aniket Agarwal, Advocate,
Ms. Anshumala Bansal, Advocate,
Ms. Ruska Saha, Advocate,

For the respondent : Mr. Ratnanko Banerjee, Advocate,
No.3 Mr. Rudraman Bhattacharya, Advocate,
Mr. Anumoy Basu, Advocate
With

G.A. No. 2211 of 2009
G.A. No.2212 of 2009
A.P.O.T. No.315 No.2009

C.S. No. 219 of 2009

DEBASREE CINEMA & ORS.

Versus

VIPUL AMRUTLAL SHAH & ORS.

With

A.P.O.T. No.316 No.2009

G.A. No. 2213 of 2009

C.S. No. 219 of 2009

RAVI KINNAGI

Versus

VIPUL AMRUTLAL SHAH & ORS.

For the Appellant : Mr. Kalyan Bandopadhyay, Sr. Advocate,
(In G.A.2211/09) Mr. S.K. Mal, Advocate,
Mr. A. Raichaudhuri, Advocate,
Ms. S. Shaw, Advocate,

For the Appellant : Mr. Pratap Chatterjee, Sr. Advocate,
(In G.A.2213/09) Mr. Soumya Roy Chowdhury, Advocate,
Ms. Sankha Dasgupta, Advocate,

For the respondent : Mr. S.N. Mookherjee, Sr. Advocate,
(In G.A.2211/09) Mr. Ranjan Bachawat, Advocate,
& Mr. Sayan Roy Chowdhury, Advocate,
(In G.A.2213/09) Mr. S. Dasgupta, Advocate,
Mr. Aniket Agarwal, Advocate,
Ms. Anshumala Bansal, Advocate,
Ms. Ruska Saha, Advocate,
Mr. Ratnanko Banerjee, Advocate,
Mr. Rudraman Bhattacharya, Advocate,
Mr. Anumoy Basu, Advocate

Heard on : 11.08.09, 12.08.09, 14.08.09, 17.08.09, 18.08.09,
19.08.09, 20.08.09, 21.08.09 & 24.08.09

Judgment on : 01.09. 2009

Pinaki Chandra Ghose, J : This appeal is directed against an ad-interim order of injunction passed in a copyright suit on 10th August, 2009 by this Hon'ble Court.

The Hon'ble First Court was pleased to pass an ad-interim order of stopping exhibition of a Bengali film titled as 'Poran Jaye Joliya Rae'. From the said order, further two appeals have been preferred by the producer and director respectively of the said film. A separate appeal has been preferred by a body of five exhibitors.

We have heard the learned Counsel for the parties at length and intend to dispose of all these appeals by this common judgment.

A Hindi film titled as 'Namastey London' was released. It was a run away success. According to the averments made in the interlocutory application, the film earned more than Rs.100 crores in box office collections.

The story of the film is like this. There is a non-resident Indian family in Britain. The parents are conservative and conscious of their Indian roots and culture. Their daughter Jasmeet has been brought up in Britain and professes to be British by culture. She is resistant to imbibing Indian culture. Her parents think of her marriage to an Indian. She has a British boyfriend by the name of Charlie Brown. She is brought over to India where she is married to Arjun. Both Arjun and she returned to London. In London she disclaims her marriage with Arjun. She says that her marriage in India is void and that she has no legal relationship with Arjun. Arjun is psychologically affected by this attitude, but accepts it somehow. Jasmeet continues to entertain ideas of getting married to Charlie Brown. She continues her relationship with him, in the presence of Arjun. Arjun realises her feelings and cooperates in Jasmeet's marriage with Charlie Brown. At the point when Jasmeet is to wed Charlie Brown in a church there is a complete change in her feelings. She does not marry Charlie Brown and affirms her marriage with Arjun.

It appears that as early as on 22nd July, 2009 before the release of Bengali film titled as 'Poran Jaye Joliya Rae', newspapers i.e., The Hindustan Times and others reviewed and warned the readers that the said Bengali film, in their opinion, is nothing but a copy of the Hindi film "Namestey London" which was known to the plaintiff/respondent, as it would be evident from the averments made in the plaint. On 24th July, 2009 the said Bengali film was released. On the basis of the prima facie evidence, the plaintiff knew that a potentially infringing film or work was about to be released. Yet no suit was filed till it released. It is also the case of the plaintiff/respondent that after release of the said Bengali film, negotiations were made by the plaintiff/respondent with the Bengali film producer on 28th July 2009 for assignment of rights in their favour which, did not fructify. The suit and the interlocutory application were filed some ten days after release of the film. We cannot help but entertain a prima facie view that the producer of the Hindi film waited to see whether the Bengali film would be a success. Upon being satisfied that it was a success and a revenue earning enterprise did the producer apply for injunction to restrain exhibition of the film on the ground that his copyright was being infringed. This was one of the reasons why by our interim order we did not

stop the film but ordered a receiver to collect the proceeds till the respondent/plaintiff was able to establish his prima facie case.

Further we justify the initial interim order on the ground that the Court of the first instance appeared to have based its prima facie finding of existence of copyright solely on the basis of its impression on viewing the film and on the basis of the prima facie finding that the Hindi film could at best be "plagiarism" and not "infringement of copyright" which finding in itself is a contradictory finding. Further when the appellant wanted production of documents of assignment by working to a letter to the producer's Advocate-on-Record, the court of the first instance simply recorded that hearing was over and no such documents would be entertained.

Before we passed the interim order in this appeal we asked the respondent/plaintiff to establish his prima facie case of infringement of copyright, as the appeal was merely a continuation of the proceeding before the trial court. There was no story annexed to the interlocutory application.

The appellant/defendant had denied before the trial court that they had any ownership of the copyright or any right to sue and had also alleged that their film was itself a copy of the 1970 Hindi film Purab Aur Paschim and hence did not enjoy any copyright. In the stay petition no such proof of their entitlement to copyright was annexed by the respondent/plaintiff. In those circumstances we gave them leave to produce documents as they may be advised to produce upon furnishing copies to the appellant/defendant and similarly the appellant/defendant was given such leave. Pursuant to such leave large volumes of documents have been produced by both parties as follows:

Sl No.	Documents with date
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01. Artist agreement dated 17.07.2006 between Block Buster Movie Entertainers and Mr. Akshay Kumar.
02. Option Agreement dated 16.08.2009 between Block Buster Movie Entertainers and Mr. Akshay Kumar
03. Long form agreement dated 19.01.2007 between Block Buster Movie Entertainers and Adlabs films Ltd.
04. Deed of assignment dated 07.03.2007 between Mr. Suresh Nair and Block Buster Movie Entertainers
05. Deed of assignment dated 07.03.2007 between Mr. Ritesh Shah and Block Buster Movie Entertainers
06. Deed of Assignment dated 07.09.2009 between Adlabs Films Ltd. And Mr. Akshay Kumar.
07. Deed of Assignment dated 07.09.2009 between Adlabs Films Ltd. And Mr. Vipul Amrutlal Shah

08. Letter dated 03.08.2009 from Adlabs Films Ltd. Authorizing Vipul Amrutlal shah
09. Letter dated 03.08.2009 from Akshay Kumar authorizing Vipul Amrutlal Shah.
10. Caveat filed on 31.07.2009 in the Bombay High Court against Block Buster Movie Entertainers Pvt. Ltd. Received on 04.08.2009
11. Caveat filed on 30.07.2009 in the Alipore Court, Calcutta against Block Buster Movie Entertainers received on 05.08.2009
12. Caveat filed on 29.07.2009 in the Calcutta High Court against Block Buster Movie Entertainers Pvt. Ltd. Received on 17.08.2009
13. Eastern India Motion Picture Association: Bye Laws relating to Disposal of Disputes dated September, 2002.
14. Chart comparing the comparison of the films "Namastey London" and "Poran Jaey Joliya Re" as handed over by the appellant and annexed by the plaintiff respectively.
15. Copy of the visiting card of Mr. Mahendra Soni, Director of the Appellant/Defendant.

Together with the above document reliance was also placed on all documents annexed to the Stay petition of the Appeal preferred by the Director, being the Second appeal, and the Stay petition in the appeal preferred by the exhibitors being the third appeal.

We note that at the time of passing the interim order, the plaintiff was unable to establish his prima facie case.

The appellant/defendant has rejected the claim for copyright on the following substantial grounds:

- (a) There is no originality in the story. It is substantially the same as the Hindi film made in 1970, Purab Aur Paschim.
- (b) The respondent/plaintiff has no copyright over the film or story for the other following reasons:
 - (i) He assigned his copyright to Ad films. By agreement dated 19th January 2007.
 - (ii) That agreement contained a bundle of rights that was being assigned.

One bundle of rights was the copyright and analogous rights in the film, the other bundle related to right to sue.

(iii) By the deed of retransfer dated 7th September, 2007, only part of the copy right and analogous rights were retransferred to the respondent/plaintiff.

(iv) The right to sue was retained by Ad Labs.

(v) Even if it is assumed that the respondent/plaintiff ad lab and the actor

Akshay Kumar who joint owners as tenant-in-common in the copyright, even then the right to sue was retained by Ad Lab and was never returned to the respondent/plaintiff.

(c) Even if the story of the Bengali film is substantially similar to the Hindi film, even then are several scenes in the film which are novel to the Bengali cinema. Hence the Bengali film is by itself an original work and is no infringement of the copyright of the respondent/plaintiff.

(d) Infringing copyright of a cinematography film means making an exact copy of the whole film or substantial part of the film. By copy it is meant a replication of the original and not borrowing a theme or a story or a plot for even a scene.

(e) Thereafter, all rights in the film have been transferred to an enterprise called Eros.

(f) The Hon'ble Judge of the first Court erred in viewing the film also.

In support of the above contentions learned counsel appearing on behalf of the appellant/defendant has cited two Single Bench decisions of the Bombay High Court in the cases of Star India Private Limited vs. Leo Burnett (India) Private Limited, reported in 2003(27) PTC 81 (Bom) and in the case of Zee Entertainment Enterprises Ltd. vs. Gajendra Singh & Ors., reported in 2008(36) PTC 53 (Bom) which ascribe a very narrow meaning to the word 'copy' of a cinematography film so as to denote what is commonly understood as 'carbon copy' or a 'replication' of the whole or a part. This view also seems to be endorsed by Norowzian vs. Arks Ltd. & Ors., reported in 1998 FSR 394 being a decision of a Q.C. sitting as a deputy judge of the Chancery Division of the High Court.

He further relied on the decision in the case of Raghunath Rai Bareja & Anr. vs. Punjab National Bank & Ors., reported in (2007)2 SCC 230 and submitted that there should be literal interpretation of the word 'copy' and the court cannot add or subtract or add meaning to the expression. In other words, the Court cannot add 'substantial' before the word 'copy' for adjudging infringement of a cinematography film. In this context he has cited the decision of Prior vs. Lansdowne Press Pty. Ltd., reported in 1977 RPC 511, where the Court held that in relation to rights of co owners of copyright. He also relied on the decision in the cases of Seetharama Ayyar & Anr. vs. Narayanaswami Pillai & Anr., reported in AIR 1919 Madras 1076 and Union of India vs. Alliance Assurance Co. Ltd. & Anr., reported in 66 CWN 419 in support of his such contention and submit that upon re transfer of assignment rights the right to sue was retained by Ad Lab and was not re transferred. He has also cited the decision in the case of Maganlal Savani & Anr. vs. Rupam Pictures (P) Ltd. & Ors., reported in 2000 PTC 556 and explain the meaning of the work exploitation, in aid

of his submission that rights have been transferred to Eros. Regarding the Hon'ble Judge's viewing of the film, exclusively in the case of Raj Chandra Banki & Ors. vs. Iswar Chandra Banik & Ors., reported in AIR 1925 Calcutta 170 was also cited and learned counsel contended that it was improper for the Hon'ble Judge to do so.

On the other hand, learned Counsel appearing on behalf of the respondent/plaintiff submitted as follows:

- (a) Copyrights subsists in cinematography film;
- (b) Copyright also subsists in a part or component of the film namely story and screenplay, sound track, lyrics and so on;
- (c) The respondent /plaintiff had employed the story and screenplay writer to write the story and screenplay according to the directions of the respondent/ plaintiff - producer and hence as employer he had the first copyright over the work, by virtue of Section 17(a) and (c) of the Copyright Act;
- (d) The respondent/plaintiff also claims copyright by virtue of assignments made by the story and screenplay writers by agreements dated 7th March, 2007;
- (e) Although the respondent/plaintiff had assigned copyrights and analogous rights and the right to sue to Ad Labs by agreement dated 7th March, 2007 by the agreement retransfer at least 1/3rd of those rights were returned to the respondent/plaintiff;
- (f) The respondent/plaintiff Is the joint owner as tenant-in-common of the entire copyright of the film and the story and screenplay therein with inter alia Ad Labs and as such tenant-in-common had an independent right to maintain an action for injunction and damages. Those rights are vested severally in each tenant or joint owner or part owner of a copyright;
- (g) The Bengali film is a substantial copy of the story and screenplay of the Hindi film;
- (h) The cinematography film per se is also a substantial copy of the Hindi film;
- (i) The Distribution rights had been transferred to Eros.

In support of this, learned Counsel for the respondent has relied on the decision in the case of R.G. Anand vs. M/s. Delux Films & Ors., reported in AIR 1978 SC 1613, where the Supreme Court held in paragraph 46 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 or legendary facts and violation of the copyright in such cases is confined to the form,

manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal limitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."

He also relied on a Division Bench decision of the Bombay High Court in Zee Telefilms Limited & Anr. vs. Sundial Communication Pvt. Ltd. & Ors., reported in 2003(2) CTMR 16 (Bom.)(DB) which followed the above Supreme Court judgment. He has also relied on a Division Bench decision of the Delhi High Court in the case of Mirabai Films Pvt. Ltd. vs. Siti Cable Network & Ors., reported in 2003(26) PTC 473(Del) (DB) to support his contention that the Appeal Court will ordinarily not

interfere with the discretion by the Trial Court, though the Appeal Court may have come to a different conclusion and also that distributors franchisee and assignees should be bound by the order of injunction. In the case of Uttar Pradesh Co-operative Federation Ltd. vs. Sunder Bros., Delhi, reported in AIR 1967 SC 249 has also supported the argument that exercise in grant of the ad interim injunction should not be interfered with. In support of his contention he relied on three Division Bench decisions in the cases of Sm. Muktakesi Dawn & Ors. vs. Haripada Mazumdar & Anr., reported in AIR 1988 Cal 25; Jitesh Pandey vs. Smt. Urmilata Sinha & Ors., reported in 2000(2) CHN 856; Dhunseri Tea & Industries Ltd. vs. Dhunsiri Plantation Pvt. Ltd., reported in 2008(3) CHN 158. We do not know for what proposition our unreported decision in the case of M/s. Planet Retain Holding Pvt. Ltd. & Ors. vs. M/s. Pollen Dealcom Pvt. Ltd. & Anr., decided on 28th July, 2009 was cited. Thereafter, the Australian decision in the case of Zeccola & Ors. vs. Universal City Studios Inc., reported in 46 ALR 189 was cited to show that copyrights subsists in working out or expression of an idea of theme and further exercise of discretion by the Trial Court is not readily interfered with. In this case the fight was between the film "Jaws", the first film and its copy "Great White".

A series of cases on statutory interpretation were cited by both the learned counsel for the parties, the respondent/plaintiff citing in the cases of M/s. Girdhari Lal & Sons vs. Balbir Nath Mathur & Ors., reported in (1986) 2 SCC 237 and in the case of T.M. Jacob vs. C. Poulouse & Ors., reported in (1999) 4 SCC 274, to show that copy also meant substantial copy and he also cited the decision in the case of Time Warner Entertainment Company I.P. & Ors. vs. RPG Netcom Ltd., reported in 2008(37) PTC 21(Del) to justify grant of injunction. In support of the proposition that a part owner had a right to suit the decision in the cases of Cescinsky vs. George Routledge & Sons Ltd., reported in (1916)2 K.B. 325 and the case of Cala Homes (South) Ltd. & Ors. vs. Alfred McAlpine Homes East Ltd., reported in 1995 FSR 818 have been cited.

AtKin's forms of pleadings have also been referred to. The landmark decision in the law relating to copyright in cinematography film Indian Performing Right Society Ltd. vs. Eastern India Motion Picture Association & Ors., reported in AIR 1977 SC 1443 has also been cited. Further decisions in the case of Rotomac Pens Ltd. vs. Milap Chand & Company, reported in 1999 PTC (19) 757 (Cal) (DB) have also been cited. In the case of Midas Hygiene Industries (P) Ltd. & Anr. vs. Sudhir Bhatia & Ors., reported in (2004)3 SCC 90 has also been cited, for the proposition where a case of infringement has been made out, order of injunction is a matter of course. In the case of Laxmikant V. Patel vs. Chetanbhat Shah & Anr., reported in AIR 2002 SC 275 has also been cited for the same proposition that an Appeal Court will not readily interfere with the exercise of discretion by the trial court.

Further in the case of Mahendra & Mahendra Paper Mills Ltd., vs. Mahindra & Mahindra Ltd., reported in (2002)2 SCC 147 has been cited to substantiate the contention that the concept of deception or confusion which is familiar in trademark infringement law is also applicable in the law relating to copyright. That the learned Judge could inspect the film without the parties was justified by citing Sabapathi Pathan vs. Perumal Padayachi & Ors., reported in AIR 1921 Madras 323.

On the appeal preferred by a body of five exhibitors, it is alleged that each of them paid a lump sum amount to the appellant/defendant and acquired rights of exhibition of the film, the conditions in the contract, being that upon payment of such lump sum the individual exhibitors can retain all collections made by exhibiting the film. Further this film is running in more than 100 cinema halls through out West Bengal and innocent third party rights would be affected if the order of injunction is affirmed.

A cinematography film is a homogenous material. It is a collection or collage or ensemble of various works like story, screenplay, dialogue, sound track, video images, lyrics etc. Each of these works may also enjoy copyright protection. By operation of law or by contract or assignment the producer of the film may be vested copyrights in the above works. For example, the producer may employ a storywriter or a screenplay writer or a singer under a contract of employment. In that case the employer, subject to contract, is the first owner of the copyright. Otherwise, the author of the work may retain his individual copyright. (See Section 17 of the Copyright Act) Now, when all these works are put together and a cinematography film is made, a new copyright over the film is vested in the maker of the film or its producer. When the film as a whole is exhibited the individual owners of copyright in works who have permitted the film to be made cannot claim copyright but if a part of the film is segregated and the individual work is culled out and exhibited then the individual owner can assert his copyright. Now, suppose the producer of the film without taking permission of the owners of the copyrighted works exhibits the film, the film may not have any copyright at all as a substantial part of the film in infringement of other work or works. (Section 13(3)(a) of the Copyright Act.) The authority for the aforesaid legal position with regard to copyright in cinematography film is to be found in the decision of the Hon'ble Supreme Court in Indian Performing Right Society Ltd. vs. Eastern India Motion Picture Association & Ors., reported in AIR 1977 SC 1443.

However, not each and every work is entitled to copyright protection. Copyright protection is extended to original literary, dramatic, musical and artistic works; cinematograph films and sound recording (Sec. 13(1) (a), (b) & (c) of the Copyright Act). In order to claim copyright there must be some originality in the work. The author of a work may obtain raw materials for the work from any or many sources but will only be entitled to copyright if these raw materials are converted, by use of his labour skill, capital and intelligence to create another material or work which is something different from the raw materials and has an element of novelty. (See Macmillan Company Limited vs. K.J. Cooper, reported in AIR 1924 PC 75.) The next legal issue which has to be considered is the meaning to be ascribed to the word "copy". Does copy mean

(a) a carbon copy or an exact replica of the original? or

(b) a substantial replica of the original or a substantial replica of a part of the original or

(c) a substantial similarity of the copied work with the original work is in the both works viewed by viewer of ordinary prudence.

Where there is an alleged substantial similarity in the film taken as a whole with another film, in the opinion of the said viewer there is infringement of the copyright in the film. A part of a film, e.g. story and screenplay may similarly enjoy copyright. A narrow meaning of the word "copy" is an apposite and should never be given.

We are prima facie of the view that the two Single Bench decisions of Bombay High Court referred to above and the Chancery Bench decision also referred to above do not describe the law properly. We do not think that the authorities discussed above specially in the cases of *Prior vs. Landsdowne Press (Supra)* and *R.G. Anand vs. M/s. Delux Films (Supra)* together with the Division Bench decision and the Australian decision in the case of *Zeccola & Ors. vs. Universal City (Supra)* also referred to above support this view.

The copyright Act as a whole is to be appreciated. It is true that Section.14 (d) of the Act states that infringement of copyright of a film would take place by its copying. That is, in our opinion, only one type of infringement where the physical film or any electronic form of it is 'carbon copied or replicated'. It covers a case where the whole film or a part of it is stolen and exhibited and situations analogous thereto. Infringement has other elements, which we have discussed above. In that context 'copy' has to be given a broad meaning, as held by the Supreme Court in *R.G. Anand's case (supra)*.

We have made a scene by scene comparison of the two films and we prima facie hold that the Bengali film is substantially if not a verbatim copy of the Hindi film as a whole. We have also gone through the story of *Purab or Paschim* and prima facie hold that there is substantial innovation in the story of *Namaste London*. So, prima facie there is infringement of its story and screenplay in the Bengali film.

We have gone through the various agreements or assignments and retransfer and are prima facie satisfied that the respondent/plaintiff is a tenant-in-common of the copyright of the film and as such is competent to file the suit. (see *Cescinsky vs. George Routledge & Sons, Ltd. (1916)2 K.B. 325* and *Cala Homes (South) Ltd. & Ors., vs. Alfred McAlpine Homes East Ltd., 1995 FSR 818*).

Further, we are prima facie satisfied that only the distribution rights of the film were transferred to Eros because sub distribution agreements have been entered into by Eros. Prima facie there is nothing to suggest that copyright and other analogous rights as a whole in the film had been transferred to Eros.

We are prima facie satisfied that at the ad interim stage, a learned judge is entitled to view a film, exclusively, in a copyright matter, and to an impression whether there is infringement and absence of the parties during such viewing should not vitiate the finding when other materials together with the impression carried by the learned judge on viewing of the film have also been taken into account to arrive at the ultimate prima facie finding. (See *Sabapathi Pathan vs. Perumal Padayachi & Anr., (supra)*). In support of the contrary view, learned counsel for the appellant/defendant cited the decisions in the cases of *Raj Chandra Banik & Ors. vs. Iswar Chandra Banik & Ors.,* reported in AIR 1925 Cal 170 and the case of *Manindra Kumar Rai vs. Paresh Chandra Dey,* reported in AIR 1971 Assam 127 may be true when a Judge makes an inspection during the time of hearing of the suit.

We are further of the view that prima facie the right to sue is retained by a part owner. We are prima facie satisfied and hold that Mr. Kalyan Bandyopadhyay, learned Senior counsel's clients are distributors i.e. agents or sub-contractors and their right or remedy, if any, is against their respective principals in an appropriate proceeding. He has no right in the present proceedings except to the extent protected by the order.

We further find that the suit was instituted on or about 3rd August 2009. The interim application being G.A. No. 2064 of 2009 was moved on 4th August, 2009 when the Hon'ble First Court inter alia directed the appellants to submit to court a statement of box office collections for 4th August 2009. The order to submit statements of box office collections was extended to include collections on 5th August 2009 by an order of that date further extended to include the period upto 11th August 2009 by an order of 6th August 2009. Ad interim relief was finally granted by the order under appeal dated 10th August 2009. An injunction order in terms of prayer 'b' of the notice of motion was passed together with another injunction restraining the appellants not to transfer or assign any global rights in the film or to broadcast the same in cable, satellite, television or any other form till twelve weeks.

Since, respondent/plaintiff had made considerable delay, in our opinion, to institute proceedings to protect his alleged copyright and since he also tried to negotiate with the Bengali film producers for assigning rights in their favour on 28th July 2009 when the Bengali film had already been released on 24th July 2009, we think that it would be very unjust to direct the receiver to collect all box office collections from the date of release of the film.

Further extensive third party rights have been created. The maker of the Bengali film, following the usual practice in the trade has entered into contracts with distributors, who have been given rights to exhibit the film upon payment of fixed sums to the producer, the contract providing that any collection made by those distributors by exhibiting film themselves or by sub distribution could be retained by them. Now subject to hearing of the suit in our prima facie opinion these distributors are innocent parties.

In the circumstances all the above appeals are dismissed.

We hold that the ad interim order was rightly passed by the Hon'ble First Court. At the moment the receiver will only collect the sums paid by these distributors to the producer for exhibiting the film. The producer shall give a list of all such distributors and the distributors and the producer will faithfully render accounts to the receiver who after inspection and verification of the same will collect all such sums as directed. 1/3rd of the above moneys may be retained by the producer, roughly representing the proportionate revenue, for the period of 24th July, 2009 to 3rd August, 2009. The rest will be handed over to the receiver. The receiver will keep all the above sums collected by him in a Term Deposit with United Bank of India, Old Post Office Street Branch, or State Bank of India, Kolkata Main Branch, as directed by our interim order pending hearing of the appeal. Excess, paid to the Receivers may be refunded. The receiver will identify distributors and sub distributors. Our interim order is modified accordingly. We make it clear that if the producer has exhibited the film, in any area, then the entire box office collections from 4th August, 2009 is to

be made out to the Joint Receivers.

Further the appellant restrained from making any copy version or adaptation of the film in any regional language.

With the above modification the judgment and order dated 10th August, 2009 is affirmed and will continue until the application is disposed of by Hon'ble First Court.

We also extend the time to file affidavit-in-opposition by two weeks, reply one week thereafter and request the Hon'ble Judge to hear out the matter at His Lordship's earliest convenience.

We further make it clear that our observation, in facts, is not stand in the way to decide the application by the Hon'ble First Court.

(PINAKI CHANDRA GHOSE, J.) I agree.

(I. P. MUKERJI, J.) Later :

The Court : Mr. Bose, learned counsel appears on behalf of the appellant prays stay of the operation of this order till Friday, which is opposed by learned counsel Mr. Bachawat. In our opinion, stay of the operation of this order should be granted till Thursday, Accordingly, we grant stay of our order till Thursday, i.e., 3rd September, 2009.

(PINAKI CHANDRA GHOSE, J.) (I. P. MUKERJI, J.)