

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2018

DATE OF DECISION : 19.02.2018

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

O.A.No.72 of 2018
in
C.S.No.65 of 2018

J.Manimaran,
Proprietor of M/s.J.S.Screens,
having office at No.12, Angalaparameswari
4th Street, M.G.R.Nagar,
Chennai-78.

.. Appellant

Vs.

1.M/s.Lyca Productions,
rep by its Producer Mr.Subash Karan,
No.55, Block-B, 4th Floor,
Vijayaraghava Road,
T.Nagar, (Near Vani Mahal),
Chennai-17.

2.M/s.Tamil Film Producer Council,
rep by its Secretary,
No.14/26, Yogambal Street,
T.Nagar, Chennai-17.

3.M/s.Film & Television Producers Guild
of South India,
rep by its Secretary,
No.19, Jagadeeswaran Street,
T.Nagar, Chennai-17.

4.Censor Board of Film Certification,
Shastri Bhavan,
No.35, Haddows Road,
Chennai-6.

5.M/s.UFO Digital Cinema,
No.53, Arunachalam Street,
Police Quarters, Triplicane,
Chennai-4.

6.M/s.PXD,
Prasad Extreme Digital Cinema Network
Private Limited,
No.28, Arunachalam Road,
Saligramam, Chennai-93.

7.M/s.QUBE,
No.42, Dr.Ranga Road,
Mylapore, Chennai-4.

.. Respondents

This application has been preferred under Order XIV Rule 8 of O.S. Rules of Madras High Court read with Order XXXIX Rules 1 and 2 of CPC seeking to grant ad interim injunction, restraining the 1st, 5th, 6th and 7th respondents / defendants, their men, agents and / or anybody claiming or acting through or under them, from in any manner imitating and infringing plaintiff's copyrights over its original motion film titled 'KARU' (Tamil) with any other suffix or prefix or other word in connection to this title either in theatres, Qube, UFO, PXD or any other mode of exhibition, pending disposal of the suit.

For Appliant : Mr.V.Raghavahari
for Mr.M.Kemraj

For Respondents : Mr.P.L.Narayanan for
Mr.C.Selvakumar for R-1
Mr.Krishna Ravindran for R-2
Mr.K.Saravanan for R-3
Mr.T.L.Thirumalaisamy for R-4

ORDER

Sole plaintiff in the main suit is the lone applicant herein. Defendant

Nos.1 to 7 in the main suit are respondent Nos.1 to 7 respectively in this

application. Parties in this application are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2 Central theme of the main suit and the instant application is 'கரு' (KARU) title for a Tamil cinematographic film. Incidentally / Ironically, 'KARU' in Tamil in the abstract / metaphysical sense translates to mean 'theme'. However, for a man of science translates to mean 'foetus'.

3 Defendant Nos.2 and 3 are independent associations, which I am informed, have been registered as societies. To be noted, defendant No.2 Tamil Film Producers Council has been registered under the Tamil Nadu Societies Registration Act, 1975. I have already mentioned supra that parties in this application are referred to by their respective ranks in the main suit. For the sake of further clarity, second defendant, i.e., Tamil Film Producers Council is referred to as 'Council' also. Third defendant, i.e., Film and Television Producers' Guild of South India is referred to as 'Guild' also. Defendant No.4 is the Central Board of Film Certification. To be noted, defendant No.4 is referred to as 'Censor Board' also.

4 Defendant Nos.5, 6 and 7, I am informed, are entities which are in the distribution chain in the film industry. Plaintiff is a producer, who claims that he has been making a Tamil cinematography film with title 'KARU' from 2013 and first defendant says that it is also making a Tamil cinematography film with the same title KARU, but from 2017. Therefore, in the light of the array of parties set out supra, the core lis is between the plaintiff and the first defendant. However, defendant Nos.2 and 3, i.e., Council and Guild have a pivotal role in this application as the title has been registered with them by the

first defendant and plaintiff. Censor board has very a limited role in this application and defendant Nos.5,6 and 7 virtually have no role in this application.

5 It is the plaintiff's case that he has been making a Tamil cinematographic film with title 'KARU' from 2013. According to Plaintiff, it is in the final stage (almost 90% of the film has been finished) and the first defendant has commenced making a Tamil film with the same title 'KARU' in 2017. It is the further case of plaintiff that he has registered the title 'KARU' with third defendant Guild in 2011 itself and such registration is subsisting. It is the further case of the plaintiff that he came to know some time in May 2017 that the first defendant is intending to make / is making a Tamil film with the same title 'KARU'. This according to the plaintiff is impermissible.

6 It is the case of first defendant that it is a big production house, that it had agreed to produce a Tamil film 'KARU' originally registered by one Think Big Studios, that first defendant has registered the film as 'லைகாவின் கரு' (Lyca's KARU)' with the second defendant, i.e., Council on 28.9.2017. It is also the case of the first defendant that originally one Think Big Studios had registered the title 'KARU' with second defendant Council on 26.4.2017 and as the first defendant is producing the Tamil film 'Lycavin KARU' on the basis of an agreement with Think Big Studios, the registration of the title 'Lycavin Karu' dates back to 26.4.2017.

7 Before proceeding further, it is necessary to set out the industry practice (as it unfurled in the hearing before me) with regard to registration of titles. It is the specific case of the plaintiff that the second defendant Council

and third defendant Guild are two entities with which producers of Tamil film register the title of the films which they intend to make. It is the further case of the plaintiff that a producer registers his title either with the second defendant Council or third defendant Guild, the second defendant Council and third defendant Guild exchange the names which are registered with them in such a way that they ensure that same title or similar titles and / or titles with minor variations or with prefix / suffix are not registered by more than one producer. In other words, I am informed that both second defendant Council and third defendant Guild do not issue title registration certificate to a producer without getting clearance from the other.

8 A stand was taken by the first defendant that there is no such industry practice, but it is to be noted that the first defendant claims that it has registered its title with the second defendant Council. However, third defendant Guild was represented before me by its Counsel who filed a compilation of documents dated 12.02.2018 to show that such an industry practice does exist. A perusal of the compilation of documents reveals that the arrangement is such that before issuing registration certificate of a title to a producer, the Guild or the Council makes sure that same / similar name has not been registered with the other and the certificate of registration of title is issued only thereafter. In this process, as alluded to supra, it is to be noted that even if a title, which has already been registered, is being sought to be registered with a prefix or suffix or some minor variation, the same is treated as an objection and registration of title is not granted. The second defendant Council was represented before me by its counsel Mr.Krishna Ravindran, who

submitted that the second defendant Council does give registration certificates to producers for title of their movies and that they get clearance from the Film Chamber of Commerce as well as third defendant Guild before issuing such certificates. It was also submitted by learned counsel for second defendant Council that such a procedure is being adopted to ensure that similar / same names or names with minor variations or with prefix and suffix are not already registered with the Guild or Film Chamber of Commerce. Therefore, from the submissions made before me, by second defendant Council and third defendant Guild, it prima facie emerges that there is certainly an industry practice to this effect.

9 Notwithstanding the aforesaid industry practice, in the instant case, though plaintiff had registered the title 'KARU' for his film on 03.09.2011 with the third defendant Guild, first defendant has registered the title 'Lycavin KARU' with second defendant Council on 28.9.2017. To be noted, there is hardly any difference between 'KARU' and 'Lycavin KARU'. The reason is 'Lycavin KARU' is the name of the production house, which is making the movie and therefore, 'Lycavin KARU' only means Lyca's KARU. It is not even a prefix. It is the emphatic submission of third defendant Guild that they have not given any no objection to second defendant Council for registration of 'Lycavin KARU'. Learned counsel for second defendant Council fairly submitted that he is not in a position to submit any material to show no objection clearance from third defendant Guild and / or anything to even show that the name was shared / exchanged with the Guild before giving registration certificate to first defendant. Further more, the undisputed

advertisement for the movie of the first defendant which is placed before me clearly shows that 'Lycavin' is absolutely minuscule. To my mind, it is infinitesimally small compared to the depiction of 'KARU'. The typical undisputed advertisement is as follows :



10 In the aforesaid backdrop, the plaintiff has come up with the above suit by praying for a declaration that he is the prior registered title holder of the Tamil feature film 'KARU'. The plaintiff has also sought for a permanent injunction against the first defendant (against defendant Nos.5,6 and 7 also, as they are in the distribution chain) restraining them from in any manner infringing the plaintiff's copyright over the motion film titled 'KARU' with any suffix or prefix.

11 This interlocutory application is with a prayer to restrain the first defendant (defendant Nos.5,6 and 7 also) from infringing or imitating the plaintiff's copyright over its original motion film titled 'KARU' with any suffix or

12 When the suit was moved before me on 30.01.2018, I granted an ex parte interim order which reads as follows :

“Lone plaintiff in the main suit is the lone applicant herein. Defendants 1 to 7 in the main suit are respondents 1 to 7 respectively herein. Parties in this application are referred to by their respective ranks in the main the suit for the sake of convenience and clarity.

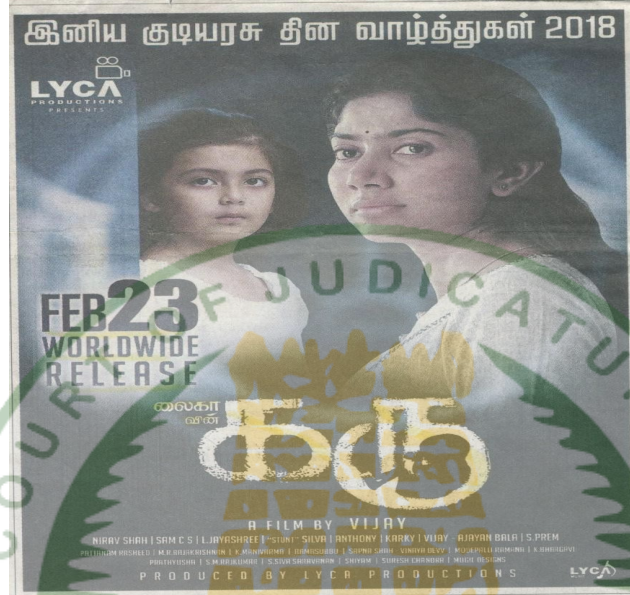
2.It is the case of the plaintiff that he duly applied for registration of the title 'கரு' (Karu) on 03.09.2011 with the third defendant for its Tamil motion picture and that it was approved on and with effect from 28.09.2011. It is the further case of the plaintiff that such registration of title for the said motion picture was renewed from time to time. According to the plaintiff, the last renewal was on 18.08.2017 and it is valid upto 17.02.2018. The receipt in this regard has been placed before me as plaint Document No.13.

3.It is also the specific case of the plaintiff that Defendants 2 and 3 are the entities which form part of the self regulation/regulation amongst the producers of Tamil motion pictures for registration of title so as to avoid confusion and conflict.

4.Further to be noted, the plaintiff has also got Censor Board Certificate in its name for the aforesaid motion picture 'கரு '. The Censor Board Certificate is dated 11.08.2017 and the same has been placed before me as plaint Document No.12.

5. It is submitted on behalf of the plaintiff that the first defendant started releasing advertisements saying that they would be releasing a motion picture with the same title 'கரு'. To be noted, the name of the first defendant is Lyca Productions. I am informed that the first defendant is advertising as 'லைகாவின் கரு'. One such advertisement for intended release of the motion picture of the first defendant is in a Tamil Daily “Dinakaran” dated 26.01.2018. The same is

placed before me and it is as follows:



6. It is also to be noted that the plaintiff has issued legal notice to the first defendant as early as on 12.06.2017 in this regard. This has been duly received by the first defendant on 13.06.2017. This legal notice together with the postal acknowledgement card has been placed before me as Plaint Document No.11. M/s.C.Selvakumar and Mr.V.V.Giridhar, learned counsel having address for service at New No.115, Old No.79, Avvai Shanmugam Salai, Royapettah, Chennai – 600 014 are before this Commercial Division and they say that they have instructions to accept notice on behalf of the first defendant and enter appearance. To be noted, though the said learned counsel submitted that they are yet to get vakalatnama from first defendant and though they have not lodged caveat, I gave them an opportunity to have their say. However, the said learned counsel are not able to show to the Court that there was any reply to the legal notice dated 12.06.2017. With regard to other aspects of the matter, they say that they are yet to get instructions from the first defendant. Furthermore, the plaintiff has also addressed the third defendant on

06.05.2017 and 26.05.2017. Both have been placed before me as plaint Document Nos.10 and 14. It is contended by the plaintiff that there is no reply to these notices to the third defendant too.

7.The plaintiff claims copyright in the title to the motion picture. Whether there can be copyright in a title to a motion picture and whether motion picture, which the first defendant intends to release, is an infringement of copyright qua title or qua other aspects of the motion picture fall for consideration. In the light of the documents placed before me, I am convinced that the plaintiff has a prima facie case as they have registered the title for the motion picture as early as on 03.09.2011 and renewed the same from time to time i.e., with the third defendant and the same is now subsisting. They have also issued notices to the third defendant as well as to the first defendant, which according to plaintiff have not evinced any reply. There is also imminent possibility of a movie with same title being released as would be evident from the aforesaid paper publication extracted supra. This tilts the balance of convenience in favour of grant of interim injunction in favour of the plaintiff. Considering the narrative supra, the third determinant for grant of ex parte ad-interim injunction i.e., irreparable injury is also overwhelmingly present in this case as the plaintiff who has been labouring on the production of motion picture titled 'Karu' from 2011 will suffer legal injury which may be incalculable. As I am convinced that all the three parameters for the grant of interim injunction i.e., prima facie case, balance of convenience and irreparable injury incapable of compensation are present in favour of the plaintiff in the present case, there shall be an ex parte ad-interim injunction as prayed for for a period of two weeks i.e., upto 12.02.2018. Notice to all defendants returnable by 12.02.2018. Private notice permitted. Though obvious, it is made clear that the plaintiff shall comply with Order XXXIX Rule 3 of the Code of Civil Procedure, 1908. While complying with Order XXXIX Rule

3, besides serving the requisite papers on the defendants, the plaintiff shall also serve a copy on the aforesaid counsel who submitted that they have instructions to accept notice on behalf of Defendant No.1.

List on 12.02.2018 “

The above ex parte interim order is self explanatory.

13 Thereafter, all defendants have been duly served. Defendant Nos.1 to 4 were represented by Counsel as mentioned supra. Defendant Nos.5,6 and 7 did not enter appearance though they were duly served.

14 The interlocutory application was heard out.

15 The contentions of Mr.V.Raghavachari, learned counsel appearing for Mr.M.Kemraj, learned counsel on record for plaintiff can be broadly summarised under four heads and the four heads are as follows :

(i) There is a trade practice regarding registration of title for Tamil movies (to be noted, this trade practice has been alluded to supra);

(ii) Copyright does exist in a title to a movie also and no registration is required to exercise or enforce such copyright;

(iii) The plaintiff's movie is 90% complete and can be released very shortly (to be noted, the plaintiff has got Censor Board certificate on 11.8.2017 for its movie 'KARU' for the teaser);

(iv) While the plaintiff has registered and got approval for his film from third defendant Guild on 28.9.2011 itself (to be noted, the Executive committee registered and approved

the title of plaintiff on 28.9.2011 and it was communicated vide proceedings/certificate dated 30.9.2011 and for the sake of uniformity, the date of registration of plaintiff's title 'KARU' is hereinafter referred to as 28.9.2011) , the first defendant has admittedly got registration from the second defendant Council at best only on 26.4.2017. (To be noted, first defendant got registration and approval of title from second defendant Council only on 28.9.2017 and it is first defendant's case that Think Big Studios got registration from second defendant Council on 26.4.2017).

16 The submissions of Mr.P.L.Narayanan, learned counsel appearing for the counsel on record for first defendant Mr.C.Selvakumar, can be broadly summarised under four heads, which are as follows :

(i)There is no industry practice as alleged / claimed by the plaintiff;

(ii)No one can claim copyright in a title to a cinematographic film;

(iii)The second defendant Council and third defendant Guild being registered societies have no statutory authority to grant registrations for title;

(iv)The copyright in a cinematographic film is judged by viewers only from its content and not from its title.

17 Submissions made on behalf of the second defendant Council and third defendant Guild have already been set out supra.

18 Mr.T.L.Thirumalaisamy, learned Central Government Standing Counsel appeared on behalf of the fourth defendant, i.e., Censor Board. I wanted to know from him whether there is any internal mechanism in the Censor Board when they issue certificates with regard to title for a movie. It was submitted by Mr.Thirumalaisamy on instructions that there is no internal mechanism and the Censor Board is concerned only with contents of the movie, which comes up for censorship. In other words, it was his specific submission that even if four movies in the same language and with the same title come up for censorship at the same point of time, they will still issue censor certificates to all four movies as long as their contents are not objectionable.

19 In the narrative supra, I have captured and encapsulated submissions made on behalf of plaintiff and defendant Nos.1 to 4.

20 From the submissions that have been made / projected before me, with regard to trade practice, I have already analysed the submissions made by learned counsel for second defendant Council and third defendant Guild and come to a prima facie conclusion that there is certainly a trade practice with regard to registration of title for a movie in the Tamil cinema industry and prima facie, there is industry practice whereby defendant Nos.2 and 3 (according to their submissions before me) ensure that two movies with the same / similar title or same title with minor variations or with prefix /suffix do not get registered. It is also prima facie clear that such a practice is being

adopted in the industry to avoid confusion in the minds of viewers and public.

21 With regard to the contention that the movie of the plaintiff is almost 90% complete, the same is disputed by the first defendant. As far as the first defendant is concerned, it is their specific stand that their movie is scheduled for theatrical release on 23.2.2018. I will deal with this issue towards the end of this order.

22 With regard to the contention of Mr.V.Raghavachari that the plaintiff has got registration of its title on 28.9.2011 itself, whereas the first defendant has got registration of its title only on 28.9.2017, there is absolutely no dispute with dates.

23 This leaves us with one submission which falls for consideration and that submission is pivotal. As would be evident from the summary of submissions, while the plaintiff contends that there can be copyright even in a title to a movie, it is the categorical stand of the first defendant that there can be no copyright in a title to a movie and that a movie is judged by its content by its viewers and not by its title. This issue in simple language if stated with brevity boils down the question 'Whether there can be copyright in title of a cinematographic film?'

24 Mr.P.L.Narayanan, learned counsel relied heavily on a division bench judgment of this court, i.e, **T.Pandiyan Arivali Vs. Kamal Hassan** reported in **1995-2-L.W 347** to say that there can be no copyright in a title. On a perusal of the said judgment, there is no difficulty in accepting the submission of Mr.V.Raghavachari that it is clearly distinguishable on facts as that judgment pertains to title in a book and title in a movie. In the instant

case, we are concerned with the same title in two movies scheduled for release almost simultaneously or at least in quick succession.

25 The next judgment which both learned counsel relied on is that of a learned single Judge of Delhi High Court in **Kanungo Media (P) Ltd. Vs. Rgv Film Factory and others** reported in **ILR (2007) I Delhi 1122**. This again pertains to two movies with title 'Nisshabd'. However, this judgment of the learned Single Judge of Delhi High Court pertains to one movie in Bengali and the another movie in Hindi. Therefore, the facts and context being very different, I am of the view that this is also clearly distinguishable on facts.

26 In this context, it need not be overstated or emphasised that a judgment is a precedent only for the principle it lays down and in this regard, a judgment of Hon'ble Supreme Court in **Padma Sundara Rao Vs. State of Tamil Nadu** reported in **(2002) 3 SCC 533** can be usefully quoted. Paragraph 9 of the said judgment reads as follows :

“9..... There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways Board v. Herrington*, (1972) 1 All ER 749 (HL)]]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

27 In this context, one more judgment of Hon'ble Supreme court in **Divisional Controller, KSRTC Vs. Mahadeva Shetty** reported in **(2003) 7**

SCC 197 can be usefully quoted and the relevant paragraph is 23, which

reads as follows :

“23. So far as *Nagesha* case [(1997) 8 SCC 349] relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority.”

28 Besides this, Mr.P.L.Narayanan, learned counsel also pressed into service an unreported judgment of a Hon'ble Single Judge of this court dated 04.12.2003 made in O.A.No.929 of 2003 in C.S.No.872 of 2003. A reading of the order shows that the learned Single Judge of this court has relied on a Division Bench judgment of this court reported in 1995 (2) LW

<http://www.judis.nic.in> 347. I have already accepted the submission of learned counsel for plaintiff

that the aforesaid Division Bench judgment is clearly distinguishable on facts as it is between title in a book and title in a movie. It has been alluded to supra. However, I did peruse this unreported order of the learned Single Judge dated 04.12.2003 that appears to be a complaint between two films with title 'Joot' and 'Jhoot-Are you Ready'. There are two reasons why the facts appear to be very different. One reason is title is very different and the second reason is the complaint thereon appears to be that adoption of same title points to infringement of copyright in the movie itself. That is not the case here. Though the second limb of the prayer in the plaint and the prayer in the instant application are not happily worded, Mr.V.Raghavachari very clearly submitted that he is concerned only with the title and it is not his complaint that the copyright in plaintiff's movie is being infringed by the first defendant. In fact, there is consensus between both learned counsel in this regard. Mr.P.L.Narayanan also very fairly submitted that plaintiff's movie is an action movie touching upon a father son duo and first defendant's movie is an emotional melodrama between a mother and her daughter. Therefore, it is nobody's case here that the copyright in the cinematographic film is being violated or infringed. This takes us back to the sole question as to whether there can be copyright in the title to a cinematographic film.

29 Before attempting to answer this question, for the purpose of completion of facts, I am to state that a judgment of learned single Judge of Delhi High Court reported in **(2015) SCC Online Del 11644** being **Sholay Media and Entertainment Pvt. Ltd. And another Vs. Parag Sanghavi and others** and an another judgment of Delhi High Court authored by the same

learned Single Judge of Delhi High Court in **2010 SCC Online Del 113** being ***J.K.Rowling and others Vs. City Publication and another*** were pressed into service by Mr.V.Raghavachari. As rightly pointed out by Mr.P.L.Narayanan, both these judgments pertain to infringement in work post trial and not at interlocutory stage where a prima facie view has to be taken. Therefore, I hold that this judgment is also distinguishable as far as the order in this interlocutory application is concerned. To be noted, in these two judgments, there is also a conclusive finding that the defendant with mala fide intention of riding on plaintiff's popularity and dishonestly reaping illegal profits by trading upon hard earned reputation and goodwill of the plaintiff had caused infringement. All that are far-fetched at this interlocutory stage and in any event far from the factual matrix herein too.

30 A judgment of another learned Single Judge of this court reported in **2013 (5) LW 429** (decided on 25.9.2013) [***R.Radha Krishnan Vs. A.R.Murugadoss***] was pressed into service by both sides. This again is a dispute pertaining to a short film produced by plaintiff in that suit and a regular feature film produced by the defendant. Therefore, this is also distinguishable on facts.

31 Lastly, a famous celebrated 'Ambal Andar' case in ***K.R.Chinna Krishna Chettiar Vs. Sri Ambal and Co.*** reported in **AIR 1970 SC 146** was pressed into service by Mr.P.L.Narayanan in an attempt to say that class of end users should also be looked into. This again does not help the clinching issue in the instant application, as 'Ambal Andar' judgment arose under Trade Marks Act and it pertains to a trademark. Further more, it is the specific case

of both sides in the instant application that they are concerned only with title.

32 Now, I attempt to answer the question as to whether there can be copyright in a title to a cinematographic film. For this purpose, I deem it appropriate to extract sections 14(1)(d), 13(1)(b) and 2(y)(ii) of the Copyright Act, 1957 which read as follows :

“14.Meaning of copyright.--(1) For the purposes of this Act, “copyright” means the exclusive right, subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:--

- (a) x x x x x x x x
- (b) x x x x x x x x
- (c) x x x x x x x x
- (d) in the case of a cinematograph film,--
 - (i) to make a copy of the film, including--
 - (A) a photograph of any image forming part thereof; or
 - (B) storing of it in any medium by electronic or other means;
 - (ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;
 - (iii) to communicate the film to the public;

13.Works in which copyright subsists.(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,---

- (a) x x x x x x x x
- (b) cinematograph film; and
- (c) x x x x x x x x

2.Interpretation.-- In this Act, unless the context otherwise requires,----

x x x x x x x x x x x x x x x x

(y) “work” means any of the following works, namely:--

- (i) x x x x x x x
- (ii) a cinematographic film;
- (iii) x x x x x x

33 In my considered opinion, a combined reading of the aforesaid three provisions in the Copyright Act, 1957, i.e, Sections 14(1)(d), 13(1)(b) and 2(y)(ii) in that order clearly reveals that copyright subsists in a cinematographic film and the cinematographic film in turn includes even photograph of any image forming part thereof. More importantly, meaning of copyright (as would be evident from Section 14(1)(d)(iii)), is essentially / primarily for communicating the film into public. Therefore, the title would definitely form part of the film, when even a photograph of any image forming part of the film is copyright. More importantly, the first point of communication of a film to public is the title. The film itself is identified only by its title. This proposition in my considered view follows as an indisputable sequitur. In this context, the submission of Mr.P.L.Narayanan that copyright is judged by viewers on the basis of the film and not by the title is an argument which will arise only post viewing.

34 On a demurrer, assuming that the title does not form part of the copyright of the film, it is still the only tag by which the copyright in the movie is identified. 'Don't Judge a book by its cover' is a famous adage. Even if a book is not judged by its' cover, it is certainly identified only by the title, which in other words is cover.

35 On a further demurrer, even if it is assumed that there can be no copyright in the title to a cinematographic film, the producer of the movie

has certainly a legal right in the title to a movie particularly in the light of industry practice which has been alluded to supra.

36 Therefore, for the purpose of disposal of this application, it can be safely construed that the producer of the movie certainly has a right in the title, even if it is not copyright.

37 In the instant case, there is no disagreement or dispute between parties that plaintiff registered his title on 28.9.2011, whereas the first defendant registered its title only on 28.9.2017, exactly six years later. In this regard, learned counsel for first defendant pointed out that the documents placed before Court reveal a break in the chain of renewals of plaintiff's registration of title between 3.9.2012 and 18.8.2015. This according to me is of no consequence, more so at this prima facie stage as the point of commencement of production of movies are not in dispute (plaintiff commenced in 2013 [plaintiff's pooja was on 9.9.2013] and first defendant commenced only in 2017). Even the date of initial registrations, i.e., 28.9.2011 (plaintiff) and 28.9.2017 (first defendant) are not in dispute. To be noted, in the course of hearing, some doubts were raised by learned counsel for first defendant regarding plaint document No.6 regarding Pooja / commencement of production on 9.9.2013. Doubts were raised that photocopies in the typed set may have been manipulated, i.e., interpolated and photocopied. I sent for the original suit documents from the Registry and verified. The doubts were dispelled and learned counsel for first defendant also satisfied himself that there is no manipulation in photocopying.

38 I am informed that the plaintiff is attempting to establish himself

in the industry in contra distinction to the first defendant which is a large production house and both learned counsel agree on this obtaining position. In this context, it is to be noted that I am informed that the first defendant is Lyca Production Private Limited, but it has been described as M/s.Lyca Production in the plaint. However, at this interlocutory stage, it is not of much consequence as Mr.Kemraj undertakes to carry out necessary amendment in the plaint in this regard.

39 Considering the right which a producer has in the title to a movie, I have no difficulty in accepting that two cinematographic films with the same title in the same language being released simultaneously or in very quick succession will certainly cause huge confusion in the mind of viewers and in the industry in general. It is not even in the interest of general public to permit such a course. When I say quick succession, in the context of factual matrix of this case, we are looking at an interval of two to three months.

40 This submission that release of two movies with same title in the same language either simultaneously or in quick succession (2 to 3 months) will cause confusion is something which does not require any scientific study. It does not even need a inferential process. It is simple, straight and crystal clear. In my opinion, the fact that it is bound to cause a sea of confusion is something which admits of no exception and needs no qualification.

41 Having said that, Mr.P.L.Narayanan very fairly submitted that the first defendant is willing to change the name of his motion picture as 'Vijayin KARU'. 'Vijay' in bold and 'KARU' in slightly smaller size. For this purpose, he placed before me a mock still which is as follows :



42 To be noted, I had the benefit of seeing the aforesaid mock still in colour, whereas the scanned reproduction of the same supra is in black and white (To be noted, this applies to other scanned extracts supra also).

43 Though this attempt on the part of Mr.P.L.Narayanan is very fair and conscientious, I am not able to accept the same. The reason is Vijay is the name of the Director. This again means 'Vijay's KARU' akin to 'Lyca's KARU'. In this regard, 'Lycavin' or 'Vijayin' certainly cannot be construed as part of the title as rightly contended by Mr.Raghavachari, as they translate to Lyca's or Vijay's indicating that the movie has been 'produced' or 'directed' by 'Lyca' or 'Vijay'. It is not even a prefix and title continues to remain 'KARU' irrespective of whether you say 'Lyca's KARU' or 'Vijay's KARU'. I find no

difficulty in accepting this submission of learned counsel for plaintiff. One more aspect that emerges from this submission is that it is still not too late for the first defendant to change the name of title of its cinematographic film. This clearly indicates that it is still possible for the first defendant to change the title to its movie.

44 This takes us to the claim of the plaintiff that his cinematographic film is 90% complete and can be released within the next two to three months, which is being disputed by the first defendant. To be noted, I have mentioned supra that I will deal with this towards the end of this order.

45 While disputing that plaintiff's movie is 90% complete, it was submitted by Mr.P.L.Narayanan that a very well established and reputed film Director may be requested to analyse or see the plaintiff's movie and give a report as to whether it is actually 90% complete and as to whether it is capable of being released within the next two or three months. It was also submitted by first defendant that if the report confirms the claim of the plaintiff, the first defendant will change the name. Axiomatically, it was submitted that if the report is otherwise, the plaintiff should change the title to his cinematographic film. It was also very fairly submitted by Mr.P.L.Narayanan that this commission can be done at his cost, i.e., at the first defendant's cost considering that it is a large production house unlike the plaintiff. Mr.V.Raghavachari straight away agreed to this course on instructions from the plaintiff, who was present in Court. When asked to agree on a renowned film personality, who is mutually acceptable, on the next day,

on instructions, it was submitted on behalf of first defendant that it may become a long drawn process and first defendant would rather invite an order from me considering that the first defendant's film is scheduled to be released on 23.02.2018.

46 In this regard, before concluding this order, I need to necessarily allude to one aspect of the matter. In my considered opinion, the first defendant has to blame itself for being in this situation with barely a week to go for its scheduled release. The reason is, it is the specific case of first defendant that they first made public their title and making of their movie on 09.06.2017 by an advertisement in a Tamil daily 'Dhinathanthi'. In less than three days therefrom, i.e., on 12.6.2017, plaintiff had issued a lawyer's notice to first defendant bringing to their notice that plaintiff has got registration of title for 'KARU' and requested the first defendant to not to use the title 'KARU'. The first defendant had also been put on notice that legal action will follow. This notice dated 12.6.2017 has been duly received by first defendant on 13.6.2017. This lawyer's notice together with postal acknowledgement card has been placed before me as plaint document No.11. The first defendant admitted the receipt of lawyer's notice. However, the first defendant had not even chosen to reply to the lawyer's notice. More importantly, as set out supra, plaintiff has already got certificate from Censor Board on 11.8.2017 for the teaser for his movie. That has also been placed before me as plaint document No.12. Even prior to 09.06.2017 before the first defendant releasing the official advertisement, on coming to know from industry sources, plaintiff has addressed a letter to the third defendant Guild on 6.5.2017 about

which I have alluded to supra. The first defendant being a large production house, receiving a lawyer's notice about this very lis on 13.6.2017 and doing nothing about it for the next eight months clearly tilts the balance of convenience against the first defendant. It also demonstrates that plaintiff has been very diligent. Plaintiff has not come to court at the last minute to stall the release. The suit has ultimately been filed on 19.1.2018. This tilts the balance of convenience in favour of the plaintiff.

47 Considering that this matter is before the Commercial Division, it is open to the first defendant to accelerate trial by completing pleadings, admission and denial of documents under Order XI Rule 4 of Code of Civil Procedure, 1908 ('CPC' for brevity) as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016) and seeking a case management hearing under Order XV-A of amended CPC.

48 However, I make it clear that if the first defendant chooses to take out an application for appointment of a Commissioner to ascertain the stage of the plaintiff's movie, this injunction application being allowed will not come in the way. In other words, I leave that option to first defendant open. If the Commission is sought for, the issue can be resolved even within a fortnight is what I am given to understand by both sides.

49 Owing to all that have been set out supra, as I am very clear in my mind that release of two cinematographic films in the same language with same title in quick succession (2 to 3 months) which is almost simultaneous, will certainly cause a sea of confusion, I have no difficulty in coming to the

conclusion that the instant prayer for interlocutory injunction deserves to be acceded to. I do so.

50 This injunction application is allowed. No costs.

19.02.2018

Index : Yes/No

vvk

Note to office:

Issue order copy on 19.02.2018.



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M.SUNDAR, J.

vvk



order in
O.A.No.72 of 2018
in
C.S.No.65 of 2018

19.02.2018

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