

OA.No.103 of 2018  
in CS.No.459 of 2017

C.V.KARTHIKEYAN, J.

This application has been filed by the Plaintiff, seeking an order of interim injunction, restraining the Respondents 1 and 2/ Defendants 1 and 2 from using/ exploiting the name, 'Nagesh' or 'Nagesh Theatre', for promoting the film 'Nagesh Thiraiarangam' in any of their film or works, pending disposal of the suit.

2. Much earlier on 16.8.2017, this Court had heard the arguments in A.Nos.3776 and 3777 of 2017 and OA.Nos.611 and 612 of 2017. Those applications were also on the very same lines, seeking interim injunction. After hearing both the parties, this Court had passed the following order:-

11. For all the reasons stated above, the interim injunction granted in O.A.No.611 of 2017 and O.A.No.612 of 2017 will have to be vacated, however subject to the following conditions:-

(i) The first and second defendants cannot use the name "Nagesh" independently, or exploit the popularity of the famous Actor C.K.Nagesh for promoting the film "Nagesh Thiraiarangam."

(ii) The defendants shall use the word "Nagesh Thiraiarangam" and cannot refer to the name "Nagesh Theatre", T.Nagar, Chennai.

(iii) Teasers/advertisements produced by the defendants allegedly using the name of the actor "C.K.Nagesh" or the theatre "Nagesh Theatre" have to be immediately withdrawn. Advertisements of the movie shall not be on the basis of the popularity of the Actor "C.K.Nagesh" or "Nagesh Theatre".

3. In view of the fact that this Court had granted permission to the

Plaintiff to approach the Court at any time, they have come with the present application, complaining that the Defendants are exploiting the name 'Nagesh'

or 'Nagesh Theatre' for promoting the film Nagesh Thiraiarangam. In the present application, the Applicant, who is the Plaintiff in the suit, has stated that the 1st Respondent was interviewed by a TV Channel with respect to the movie, 'Nagesh Thiraiarangam'. It is stated that he had admitted that he had chosen the title 'Nagesh Thiraiarangam, only on account of the popularity of the actor late C.K.Nagesh. As a matter of fact, the entire interview was reproduced in vernacular in the affidavit. It is as follows:-

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vg;gt[nk xU glj;jgj;jpahd fij ,y;y/ mnjhlrhuk;rk; ghh;j;P';fdh. me;j ill;ony brhy;ypLk;/ ,g;g ehnfc;& wt';fte;J. vy;yhUf;Fnk gpof;Fk;/ xU cwPnuht TI gpof;fhj MI;fs; ,Uf;fh';f/ But, xUfhkoad. gpof;fhjt';f cyfj;jpy ahUnk fpilahJ/ Vd;dh. vy;yhUf;Fnk gpof;Fk;/ So, mg;gog;gl;l subject jhd; ,J/ vy;yhUf;Fk; gpor;r khjphpahd xUfij jhd; ,J/ mJdhy. mJy th;u Characterisation k; ehnfc;& d;wt';f/ me;j Character nuhl Name. mnjhl ressemblance fpilahJ/ mtUila iyg; gj;jpnah. mjgj;jpnah rk;ge;jg;gl;lfij ,y;iy/ ,e;j khjphp ehnfc;& d;w xU nfuf;lh; xUokhd;Lf;fhf. xUjpnal;lh; mt';fSila ngkpy jpnal;lUf;F me;j xU bgah;te;j ehnfc;& jpnal;h;d btr;rpUf;nfd;/ Vd;dh. ehnfc;& mt';f mg;ght[ila Fan dh ,Ue;jdhy mth; btr;rpUf;fhh;/ me;j jpnal;lu tpf;ff;Toa NH;epiy ,Ue;jJ/ mijtpf;fg;nghnwhk;/ mJtpj;jh';fyh. tpf;fyahd;wJ jhd; subject. So, mtDila bgaUk;. jpnal;Uila bgaUk; mJnt ,Uf;fpwJdhy. me;jill;oy; btr;rpUf;nfhk;/ gps!; vy;yhUf;Fk; mJbthU \$du";rfkhd xU fkh;c&pay; ngf;/ FHe;ijapypUe;J. vy;yhUk; \$hypah ghh;f;fToa xU fkh;c&pay; gpypk;/@

4. In the affidavit, free translation has also been given and it is as

follows:-

“About 'Nagesh Thiraiarangam, the movie:-

Normally, a film's title gives you a very good idea of what the story summary could be, not the story. Now, Nagesh is some one that everybody likes. There are some who might not necessarily like a hero, but there is probably none in the world

who could hate a comedian, because everybody likes him. This is a subject of that kind. A story that everybody likes. This is such a subject. A story that is going to appeal to all. So, the characterisation too is Nagesh, which also is the name of the theatre. There is no further resemblance. This is not a story based on the life or events that took place in actor Nagesh's life. In order to create a demand, I had named the family theatre as Nagesh Theatre, because the character's father was a fan of actor Nagesh. The theatre is lined up for sale. Do the owners sell the theatre or do they not? This is the subject. Since his name and the name of the theatre are the same, we chose that name for the movie. This is a commercial netertainer pack, meant for all. This is a commercial entertainment movie that people of all age group - from children to elders - can watch and enjoy."

5. Mr.T.R.Rajagopalan, the learned senior counsel, who appeared on behalf of the Applicant/Plaintiff, pointed out the above and stated that the Defendants are exploiting the name 'Nagesh' though there were orders of this Court, specifically directing them not to do so. In support of his arguments, the learned senior counsel has also produced Compact Discs, which according to him, contain the interview of the Director and which are exhibited in You Tube. The CDs contained the copies of video clippings from You Tube exhibited on 13.2.2018 at 7.21 and again on 14.2.2018 at 7.30 a.m.

6. It is the grievance of the learned senior counsel for the Applicant that the Defendants are continuing to exploit the name of 'Nagesh' to popularise the movie 'Nagesh Thiraiaragam'. The learned senior counsel expressed an apprehension that the common public would be made to believe that the film has a direct connection with the actor late C.K.Nagesh, on whom every one has reverence and much respect.

7. A counter affidavit has also been filed, which was sworn by the 2<sup>nd</sup> Respondent. According to him, the allegations in the application are false. It

has been categorically stated that they were not capitalising the popularity of the actor late C.K.Nagesh, in the movie 'Nagesh Thiraiarangam'. It was also stated that after the orders were pronounced by this Court, they have taken care to see that the name 'Nagesh Theatre' was not used anywhere in the movie. It has been stated that they had completed the production of the movie and had also obtained censor certificate. They had further stated that they were strictly complying with the directions of this Court and that this application has been filed with a mala fide intention at the last minute .

8. Along with this application, documents were also filed, which also showed the extracts of the CD Recordings.

9. It is also stated by the Respondents 1 and 2 that the movie is scheduled to be released on 16.2.2018. It has been further stated that the Applicant / Plaintiff has come to the Court at the last minute and is attempting to frustrate the release of the movie by one method or the other. It has also been pointed out that the Video Recordings in the CDs, which are being complained off, were actually exhibited in the You Tube from the month of June 2017 onwards even prior to the institution of the suit. It is also stated that the Defendants have no direct control over the persons, who exhibit the video clippings as shown in the CDs since it is being exploited by a third party. But, however, it is stated that all efforts were taken to withdraw such video clippings from the public domain.

10. This Court carefully considered the arguments of Mr.T.R.Rajagopalan, the learned senior counsel for the Applicant/ Plaintiff and Mr.K.G.Vasudevan, the learned counsel for the Respondents 1 and 2/

Defendants.

11. This Court, on an earlier occasion, examined the entire issue surrounding the name of the film, 'Nagesh Thiraiarangam'. This Court had specifically held that the word 'Theatre' is a commonly used name and there could not be any injunction as against the usage of such word. Quite independently, this Court had also held that the name 'Nagesh' is a pronoun and there could be no injunction from using the said name. However, this Court had placed conditions, which it was hoped that the Defendants would comply with.

12. It is now complained that the Defendants have not at all complied with the conditions, namely, not to exploit the name and theme of the the actor late C.K.Nagesh for popularising the movie 'Nagesh Thiraiarangam'. It is in this connection that much reliance had been placed on the CDs, which had been produced by the learned senior counsel for the Applicant/ Plaintiff.

13. At any rate, balance of convenience has to be weighed. Earlier, the issue of prima facie case had been examined and the Plaintiff was found not to have a prima facie to have a blanket order of injunction against the usage of words 'Nagesh Thiraiarangam' and at the same time, it was also hoped that the popularity of the actor would not be exploited.

14. The learned counsel for the Respondents 1 and 2 did not challenge the correctness of the contents in the CDs. Consequently, this Court did not take up the issue of viewing the CDs.

15. The other factor, which has to be weighed, is the fact that the movie has been scheduled to be released on 16.2.2018 and the Applicant/

Plaintiff has come to Court at the very last minute even though the video clippings in the CDs have been in the public domain and exploited in the YouTube from the month of June 2017. To this, the learned senior counsel has stated that interest was shown in taking copies of the CDs, only after the release date of the movie was actually announced. It was stated that the Applicant has come to Court at the earliest immediately after coming to know of the date of the release of the movie.

16. The other factor, which has to be weighed, is the loss of family privacy by the family members of late C.K.Nagesh. As a matter of fact, in the earlier order, this Court had also mentioned that there was a film, 'Shivaji the Boss' and in the documents filed today, a letter had been enclosed from AVM Productions, in which it had been stated that permission was sought to use the name 'Shivaji' before the name was used in the movie. It is the specific case of the Plaintiff that permission to use the name 'Nagesh' was never obtained by the Defendants even before using it as a name of the movie 'Nagesh Thiraiarangam'.

17. The third factor, which has to be weighed by this Court, is the hardship which would be caused to the Respondents 1 and 2/ Defendants 1 and 2, particularly, since the Plaintiff has come to the Court at the last stage of releasing the movies. The Respondents 1 and 2 had produced the movie. They have obtained censor certificate. They have obtained bookings in various theatres for public exploitation.

18. At this stage, if the court has to grant an order of interim injunction, relative hardship, which would be caused to the Defendants 1 and 2

would also have to be kept in mind. Weighing all these factors was a difficult proposition. However, both the learned senior counsel for the Plaintiff and the learned counsel for the Defendants came to the assistance of the Court by their matured arguments keeping in mind the object of upholding the rights of the respective parties.

19. That the movie contains the name 'Nagesh' cannot be disputed or denied. It contains the name 'Nagesh'. It is also a fact that the actor late C.K.Nagesh was an actor of much repute and popularity, who enjoyed immense reputation in the film industry and also among the general public. It is also a fact that late C.K.Nagesh had a theatre and the theatre became synonymous and was actually called 'Nagesh Theatre'. It is also a fact that the word 'Thiraiarangam' in Tamil is equivalent to the English word 'Theatre'. Consequently, the Plaintiff apprehends that there will be a reasonable feeling in the mind of a common person, who perceives the name 'Nagesh Thiraiarangam' that it also directly or indirectly relates to the actor late C.K.Nagesh or Nagesh Theatre collectively. It is to prevent such an event from happening that this suit has been filed, seeking damages and injunction

20. However, the apprehension of the Plaintiff will have to be weighed with the loss that would be suffered by the Respondents 1 and 2/ Defendants, since the Plaintiff has come to the Court at the last instance. They stated that the video clippings in the CDs, which had been produced, have been in the public domain in You Tube from June 2017. The fact that this was in public domain was not pointed out with much emphasis at the time when the earlier applications were filed before this Court. Much reliance is placed on the

same now. However, I feel that in order to balance both the parties, since the suit is also for damages, the Defendants must be called upon to deposit a reasonable amount so that it would act as security for the Plaintiff. Whether damages have to be granted or not is a matter of trial. It would be highly inappropriate on the part of this Court to presume the issues which would arise for consideration during the trial. At any rate, the Plaintiff must be given protection that if at all they were to succeed in a suit for damages, they should realise the fruits of the decree and to that extent, the Defendants must be called upon to deposit a sum of money to the credit of the suit.

21. The other aspect is the usage of the words 'Nagesh Thiraiarangam'. On this aspect, this Court placed its deep appreciation to both the learned counsel and taking recourse to their arguments, the following directions are issued:-

- i. In all the advertisements, in any vernacular or English Newspaper, in which the film 'Nagesh Thiraiarangam' is advertised, simultaneously, the 2nd Respondent has also to issue an advertisement prominently mentioning that the movie is not directly or indirectly related to either the film personality C.K.Nagesh or his theatre, which was formerly called 'Nagesh Theatre'.
- ii. These explanatory advertisement notes have to be published prominently in all the Vernacular and English Newspapers wherever the advertisements of the film is being put in the public domain.
- iii. The 2nd Respondent is also directed to put a scrolling display foot notes prominently stating that the movie is not directly or indirectly connected to either the actor, late C.K.Nagesh or Nagesh Theatre in all the theatres wherein the film is being exhibited..
- iv. Advertisements have to be put in the Newspapers/ Magazines/ pamphlets/ any other form of advertisements



immediately from morning on 14.2.2018 and simultaneous display has to be exhibited in all the theatres right from the first show of the movie and also in the television channels where advertisements for the movie are being given. Explanatory notes have to be given in all forms of advertisements either in print or electronic mode or any other social media.

- v. The Defendants are directed to deposit to the credit of the suit a sum of Rs.20,00,000/- (Rupees twenty lakhs only) on or before 2.3.2018. On such deposit, the Registry is directed to redeposit the same in any nationalised bank so that the amount could earn interest. At the conclusion of the trial, either one of the Plaintiff and the Defendants could take advantage of the deposit and the interest which accrues.

22. With the above directions, this application is closed.

14.02.2018

Index:Yes/No  
Web:Yes/No  
Speaking/Non Speaking  
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Note to Office:-

Issue on 14.02.2018.

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