

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.06.2018

PRONOUNCED ON: 22.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.264 of 2016

Wunderbar Films Private Limited, represented by
its Director, Vinod Kumar S, Chennai-34.

Plaintiff

Vs

1. Pranita Pawar Productions represented by Pranita Pawar
Mumbai
2. Pranita Pawar, Producer and Director
Pranita Pawar Productions, Mumbai
3. Chakraborty, Producer & Actor
Pranita Pawar Productions, Mumbai

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Sections 55 and 62 of the Copyright Act, 1957, for the reliefs as stated therein.

For Plaintiff : Mr.G.Sivashankaran

For Defendants : Set Exparte

JUDGEMENT

This Civil Suit has been filed, seeking a Judgement and Decree,
against the Defendants, for the following reliefs:-

- a) permanent injunction, restraining the Defendants by themselves, their servants or agents, assignees, licensees or anyone claiming through them from in any manner infringing

the Plaintiff's copyright including audio and video rights in respect of the work being the Tamil cinematography film "Velaiyilla Pattathari" or VIP by remaking the same in Marathi and re-titling the same as Mahja Naav Shivaji or such other name/title, and/or releasing, telecasting, streaming, uploading the infringing material in whole or reproduction of any part thereof by exploiting for public viewing either by releasing, selling the rights to, broadcasting, telecasting, streaming, uploading in any platform including cinema theatres, satellite or terrestrial television or making the same available through the Internet or such mode of transmission and reception to reach the public for viewing;

- b) direction to the Defendants to surrender to the Plaintiff the entire stock of software, digitised master copies, master cassettes, master HD/DVD/CDs, disks, sound recordings, literature and letterhead, communication pamphlets and all materials with the infringing work Mahja Naav Shivaji or such other name/title;
- c) direction to the Defendants to render true and faithful account of the profits earned by them through the business using the offending infringing material Mahja Naav Shivaji or such other name or title;
- d) for costs of the suit.

2. The case of the Plaintiff is as follows:-

a. The Plaintiff is a Company incorporated under the Companies Act, 1956 at Chennai. The Plaintiff is engaged in the business of production of cinematography films in the Indian film industry especially in Tamil Nadu. The Plaintiff is the producer and the copyright holder of the Tamil film 'Velaiyilla Pattathari, starring K.Dhanush as the Hero, (herein after referred to as VIP), holding both audio and video rights, under the Copyright Act, 1957, in relation to VIP including storyline, screenplay, dialogue, etc. in all languages and across all formats, including remaking rights, theatrical, satellite telecast, overseas rights, internet broadcast, etc. Storyline of VIP was written by R.Velraj under a

contract with the Plaintiff and he was also director of the film VIP. The Central Board of Film Certification had granted 'U' Certification for VIP on 14.07.2014. VIP was released worldwide on 18.07.2014. VIP was also dubbed in Telugu and released as Raghuvaran B.Tech, on 01.01.2015.

b. The Plaintiff had found on the internet that the Defendants under the banner of Pranitha Pawar Productions are producing a Marathi cinematography film, 'Majha Naav Shivaji' (herein after called MNS). The 2nd Defendant is the Director or producer of the said Marathi film. The 3rd Defendant is also a producer and is starring as the Hero. The promos, teasers, trailers, the storyline, scenes write ups, clips of songs, etc. of MNS publicly available on the internet show that MNS is nothing but a remake of VIP. The storyline is the same. The songs are copies of the songs of VIP. Thus, the Defendants have infringed the Plaintiff's copyrights, including audio and video rights.

c. Entire storyline copied from VIP by the Defendant is as under:-

The character of the hero, his educational qualification - a civil engineer, his family-father mother and a brother who is working, his inability to get a job for four years, his pedal bike, his falling in love with the neighbour's daughter, the way his mother dies, how the hero is offered a job in a civil engineering Company by a cancer patient's father after she gets the hero's mother's lungs by organ donation after the death of his mother, how the hero overcomes all obstacles to successfully complete the Government slum clearance board project that he wins for his Company against all odds, MNS Hero is portrayed as slender, ordinary looking with a stubble beard, just as

VIP's Hero. MNS is a slavish copy of the Plaintiff's cinematography film VIP.

d. Scenes copied from VIP by the Defendant are as under:-

S.No.	Scenes from VIP	Copies in MNS
1	The hero sitting on the terrace with his mother where she says he is talented and will accomplish	The hero sitting on the terrace with his mother, etc, copied
2	The hero sitting on the terrace with his mother looking through a telescope	The hero sitting on the terrace with his mother looking through a telescope - copied
3	The hero walking away from the gate in determination	The hero walking away from the gate in determination - copied
4	The hero sitting on the terrace and pulling out a bottle of alcohol from behind the water tank and drinking while shouting at his younger brother	The hero sitting on the terrace and pulling out a bottle of alcohol from behind the water tank and drinking while shouting at his younger brother - copied
5	The hero walking home drunk and the neighbour's daughter walks home with him	The hero walking home drunk and the neighbour's daughter walks home with him - copied
6	The hero walking in front of the earthmover with his two assistants	The hero walking in front of the earthmover with his two assistants - copied
7	The hero has a pedal bike	The hero has a pedal bike
8	The hero comes home to find his mother dead and his father is angry with him.	The scene where the hero comes home to find his mother dead and his father is angry with him.
9	"Udhungada Sangu" song dance scenes	Tune of the song, group dance copied
10	"What a karuvad" song	Tune of the song, group dance copied.

e. Songs copied from VIP by the Defendant are as under:-

1. Amma Amma
2. Udhungada Sangu
3. What a karuvad

f. The Defendants have infringed the Plaintiff's audio and video

rights. MNS is scheduled for release in May 2016 as evidenced by the internet

information. The Defendants have no right whatsoever in the copyright of MNS

which is a remake of VIP. Various entities to whom rights have been assigned

are now questioning the Plaintiff after knowing about the release by the Defendants. The Defendants should not be allowed to release MNS by infringing the Plaintiff's copyrights in VIP. The Plaintiff will be put to irreparable loss and injury which cannot be compensated in monetary terms if the Defendants are not restrained from releasing MNS. After coming know about the infringement of the Plaintiff's copyrights over VIP by the Defendants, the Plaintiff had sent a legal notice, dated 12.04.2016 to the 2nd and 3rd Defendants, which was returned undelivered. Thereafter, the Plaintiff published a public notice on 24.04.2016 in the local Newspapers. If the Defendants are not restrained from further infringing the Plaintiff's copyrights in VIP, the Plaintiff will be put to irreparable loss and hardship. In such circumstances, this civil suit has been filed, seeking reliefs as stated above.

3. Despite completion of service on the Defendants both privately as well as by substituted means, and printing of their names in the cause list as well as listing the matter under the caption 'Undefended Board, neither written statement has been filed by the Defendants nor there is any representation through counsel or in person. Hence, the Defendants were set exparte by order dated 27.10.2017 and recording of exparte evidence was ordered.

4. Accordingly, the Director of the Plaintiff Company, S.Vinod Kumar, has filed the proof affidavit for his chief examination and receipt of 22 documents as documentary evidence to prove the suit claim. In the Evidence, he examined himself as PW.1 and marked Exs.P1 to P22 as documentary evidence in order to prove the suit claim.

5. In the absence of evidence on the side of the Defendants, this

Court can therefore only examine the evidence produced by the Plaintiff. The documents marked by the Plaintiff, viz. Ex.P1 to Ex.P22, establish the right of the Plaintiff to exploit the suit film VIP to the exclusion of others.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P22 adduced by PW.1, this Court is of the view that the plaintiffs has proved the suit claims and hence, the Plaintiff is entitled for the reliefs, as asked for. Accordingly, this civil suit is decreed as prayed for, with costs.

22.06.2018

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiff:-
 1. P.W.1 -
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1 is the print out of the Wikipedia write up on VIP.
 2. Ex.P2 is the print out of the Wikipedia write up on Mahja Naav Shivaji.
 3. Ex.P3 is the original letter from R.Velraj attributing copyright of VIP to the Plaintiff dated 1.7.2014.
 4. Ex.P4 is the copy of write up in Chennai chronicle about Dhanush singing with legendary singer S.Janaki for the song "Amma amma" dated 5.11.2013.
 5. Ex.P5 is the copy of the poster showing the audio release of VIP dated February 2014.
 6. Ex.P6 is the copy of advertisement in Thanthi Tamil Newspaper dated 20.12.2014.
 7. Ex.P7 is the copy of advertisement in Thanthi Tamil Newspaper dated 20.12.2014.

8. Ex.P8 is the original of central board of film certification issuance of censor certificate to the Plaintiff for VIP dated 14.07.2014.
9. Ex.P9 is the electronic record of QUBE Cinema Network - Digital print provider licence copy authorised by the Plaintiff dated 15.07.2014.
10. Ex.P10 is the electronic record of release confirmation from the Plaintiff to digital content provider QUBE Cinema Network - Real Media Technologies Private Limited, dated 17.07.2014.
11. Ex.P11 is the photo copy of posters showing release of VIP in Mumbai.
12. Ex.P12 is the copy of distributor report for release in Mumbai, dated 24.07.2014.
13. Ex.P13 is the electronic record of movie digital mastering fee invoices from QUBE Cinema Network - Real Media Technologies Private Limited, dated 28.07.2014.
14. Ex.P14 is the photocopy of VIP Cinema Vimarshanam in Ananda Vikatan dated 30.07.2014.
15. Ex.P15 is the photocopy of VIP News in Cinema Express dated 1.8.2014.
16. Ex.P16 is the photo copy of Hindiyl Vellaiyilla Patathari' article in the Tamil Hindu Newspaper, dated 3.8.2014.
17. Ex.P17 is the original legal notice sent by the Plaintiff to the 2nd and 3rd Defendants by Speed post with acknowledgement due, dated 12.04.2014.
18. Ex.P18 is the original returned envelopes with acknowledgement cards dated 18.04.2016.
19. Ex.P19 is the original public notice in the Free Press Journal English Newspaper published at Mumbai, dated 24.04.2016.
20. Ex.P20 is the original public notice in Navashakthi Marathi Newspaper published at Mumbai dated 24.04.2016.
21. Ex.P21 is the original material object - DVD containing

comparison of scenes of VIP and Mahja Naav Shivaji and Trailers of VIP and Mahja Naav Shivaji.

22. Ex.P22 is the original board resolution dated 20.04.2016.

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

22.06.2018

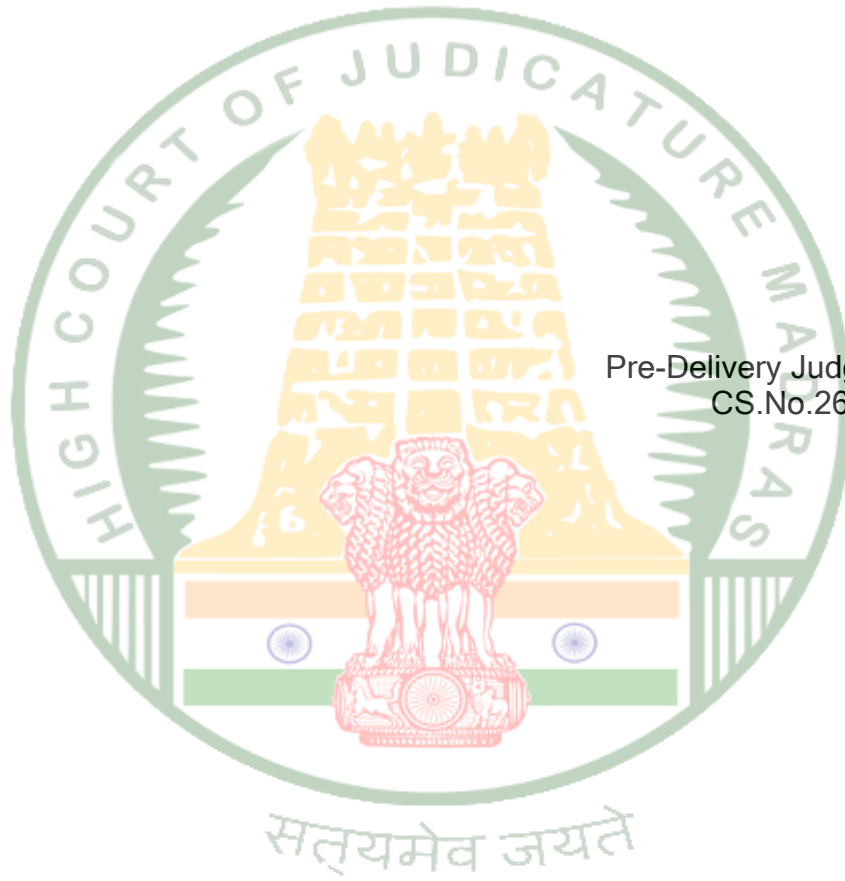
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.264 of 2016

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