

Madras High Court

Sanjay A.Wadhwa-Huf li vs M/S.Royal Talkies on 8 August, 2016

C.S.No.23 o

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2023

PRONOUNCED ON : 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.23 of 2002

Sanjay A.Wadhwa-HUF II,
No.80, New Avadi Road,
Kilpauk,
Chennai – 600 010.

... Plaintiff

VS

1.M/s.Royal Talkies,
represented by its Proprietor
Mr.S.R.Kishore (Deceased)
#29, K-3, IInd Floor,
Gopalakrishna Road,
T.Nagar,
Chennai 600 017.

2.M/s.S.S.S.Films
represented by its Proprietor
Mr.S.Sundaram
No.177 (Old No.25-C)
Arcot Road,
Chennai 600 092.

1/12

<https://www.mhc.tn.gov.in/judis>

C.S

3.M/s.Vijaya Colour Laboratory
represented by its Proprietor
Mr.B.N.Suresh Reddy
No.9-A, Kumaran Colony Main Road,
Vadapalani,
Chennai 600 026.

4.Balan

5.Ramalakshmi

... D

(Defendants 4 and 5 are brought on record as LR's of the deceased first defendant as per order dated 08.08.2016 passed in A.No.4273/2002)

Prayer: Civil Suit is filed under Sections 55 and 62 of Indian Copyright Act, 1957 read with Order IV Rule 1 of the Original Side Rules, praying for

(a) permanent injunction restraining the second defendant, agents, servants or representatives or anyone claiming through them from in any manner interfering or infringing with the exclusive copyrights subsisting in the plaintiff by an agreement dated 09.05.2000 in respect of the 120 length Tamil feature film "Nearupoo" starring Ranjith and Karishma and others produced by the first defendant as set out more fully in the schedule hereunder.

(b) Costs of the suit.

For Plaintiff : Mr.K.R.Gokulsundar
for Mr.C.Seethapathy

2/12

<https://www.mhc.tn.gov.in/judis>

JUDGEMENT

The plaintiff filed a suit for permanent injunction restraining the 2nd defendant from interfering or infringing with the exclusive copyrights of the plaintiff over the Tamil feature film 'NEARUPOO'.

2. The suit was originally filed against the defendants 1 to 3. Pending suit, the 1st defendant passed away and his legal representatives were brought on record as defendants 4 and 5. Subsequently, the suit was dismissed for default as against the defendants 4 and 5 on 14.11.2017. In view of the fact that the relief prayed for is only against the 2nd defendant. The suit was proceeded against the defendants 2 and 3 alone. They were set exparte by this Court on 07.07.2021.

3. According to the plaintiff, he is involved in the business of film finance and marketing of audio and theatrical copyrights in feature films. During the course of business, the plaintiff entered into an agreement with 1st defendant on 09.05.2000 under which the deceased 1st defendant in his capacity as producer of the Tamil feature film 'NEARUPOO' assigned the plaintiff the exploitation rights of the feature film regarding Cable TV, Video, Satellite TV, CD Video, DVD etc., for the entire world together with exclusive right

to theatrical exhibition for the entire world excluding India to the plaintiff for a total consideration of Rs.4,75,000/-. The 1st defendant also issued a lab letter informing the 3rd defendant regarding assignment in favour of the plaintiff and instructed him to issue prints of the film for exploitation to the plaintiff. It was also averred by the plaintiff that he had paid the 1st defendant a sum of Rs.3,00,000/- for the amount due under the agreement and the balance amount of Rs.1,75,000/- was due to be paid, as per the terms of agreement, at the time of delivery of the prints.

4. The 1st defendant published a notice stating that feature film would be released on 25.10.2001. The plaintiff also took delivery of the print from the 3rd defendant and exported the same out of the country through lawful channels. As requested by the 1st defendant, the balance amount was also paid to the 1st defendant along with the cost of the prints. Thereafter, the 1st defendant issued a letter to plaintiff dated 10.11.2001 informing him that due to dispute with 2nd defendant, the picture could not be released and requested <https://www.mhc.tn.gov.in/judis> C.S.No.23 of 2002 the plaintiff to hold back overseas release. The plaintiff issued a reply to the 1st defendant informing him that he was not aware of any agreement or dispute between 1st and 2nd defendants and he got the prints for overseas export by paying entire consideration as per the agreement and he could not be held responsible for non-release of the film in India. Later, plaintiff acquired knowledge that the 1st defendant entered into an agreement with the 2nd defendant for transfer of entire negative rights of feature film 'NEARUPOO' in favour of 2nd defendant by agreement dated 26.03.2001 for total consideration of Rs.32 lakhs.

5. The plaintiff also understood that 1st defendant had undertaken to cancel the existing overseas agreement with the plaintiff. Since, the 1st defendant failed to cancel agreement with the plaintiff, the 2nd defendant had agreed to reduce Rs.1 lakh from total consideration of Rs.32 lakhs by letter dated 07.05.2001. Despite the clear knowledge about the plaintiff's right, the 2nd defendant lodged a false complaint with the Central Crime Branch, Chennai as though the plaintiff, 1st defendant and 3rd defendant had committed fraud by conspiring to take the overseas prints without reference to <https://www.mhc.tn.gov.in/judis> C.S.No.23 of 2002 the 2nd defendant. Thereafter, 1st defendant filed a suit in C.S.No.1016 of 2001 against the 2nd defendant, plaintiff and 3rd defendant for declaration of copyright and permanent injunction to restrain the 2nd defendant herein from infringing the copyrights subsisting with the plaintiff's therein. He also obtained an interim order of injunction against the 2nd defendant. It is also learnt by the plaintiff that the 2nd defendant paid only Rs.8.5 lakhs out of total agreed consideration of Rs.32 lakhs and hence, the 1st defendant retained the negative rights. The 2nd defendant is falsely making a claim as if, he is the owner of the entire negative rights. The plaintiff was not made as a party to the subsequent agreement between 1st and 2nd defendants. Therefore, any arrangement between the 1st and 2nd defendants would not bind the plaintiff. It was also averred by the plaintiff that the 2nd defendant would enter into negotiation with third parties for assignment of the rights which were already assigned in favour of the plaintiff and consequently, he was constrained to file a suit for aforesaid reliefs. On these pleadings, the plaintiff sought for injunction restraining the 2nd defendant from infringing exclusive copyrights subsisting with the plaintiff under Agreement dated 09.05.2000 in respect of Tamil feature film 'NEARUPOO' which was more fully set out in the schedule <https://www.mhc.tn.gov.in/judis> C.S.No.23 of 2002 to the plaintiff.

6. As mentioned earlier, pending suit, 1st defendant died and his legal representatives namely defendants 4 and 5 were brought on record and the suit was dismissed for default as against the defendants 4 and 5.

7. Though the suit summons were served on the defendants 2 and 3, they failed to enter appearance and consequently, they were set exparte on 07.07.2021.

8. Thereafter, exparte evidence was recorded. The Kartha of the Plaintiff HUF namely Sanjai A Wadhwa was examined as PW.1 and 10 documents were marked on the side of the plaintiff as Exs.P1 to P10.

9. Heard the argument of the learned counsel for the plaintiff and perused the evidence available on record.

10. A perusal of Ex.P1-Agreement dated 09.05.2000 entered between <https://www.mhc.tn.gov.in/judis> C.S.No.23 of 2002 the plaintiff and 1st defendant would suggest that the plaintiff got assignment of exploitation rights of the Tamil feature film 'NEARUPOO' in Cable TV, Video, Satellite TV, CD Video and DVD etc., for entire world together with exclusive right of theatrical exhibition for entire world excluding India for a total consideration of Rs.4,75,000/-. Ex.P2 is a lab letter written by the Producer of the film namely 1st defendant to the 3rd defendant directing them to hand over the prints of the film to the plaintiff for the purpose of export on payment of costs. Ex.P3 is a letter written by the 1st defendant proves the payment of part of the consideration under Ex.P1 namely Rs.3,00,000/-. Ex.P4 is the notice sent by 1st defendant to 2nd defendant, plaintiff and 3rd defendant wherein the 1st defendant mentioned about the dispute between it and 2nd defendant. Ex.P5 is a legal notice issued by the plaintiff to defendants wherein plaintiff asserted it's right under Ex.P1-Agreement and also the payment of entire sale consideration. Ex.P7 is a letter addressed to 2nd defendant wherein 1st defendant informed the 2nd defendant about its inability to cancel the agreement with the plaintiff and as a consequence it agreed to reduce the consideration payable to it under agreement with 2nd defendant by Rs.1,00,000/-. Ex.P10 is an agreement entered between the 1st defendant and <https://www.mhc.tn.gov.in/judis> C.S.No.23 of 2002 and 2nd defendant dated 26.03.2001 whereunder 1st defendant agreed to transfer the entire negative rights of the feature film 'NEARUPOO' in favour of 2nd defendant for a consideration of Rs.32 lakhs.

11. Ex.P1-Agreement between the plaintiff and 1st defendant was dated 09.05.2000 whereunder 1st defendant assigned entire theatrical rights in respect of entire world except India and exploiting rights in Cable TV, Video, Satellite TV, CD Video and DVD etc., for entire world in favour of the plaintiff. Ex.P10-agreement between the 1st defendant and the 2nd defendant was dated 26.03.2001, which is subsequent to agreement with the plaintiff. Therefore, any assignment in favour of 2nd defendant is only subject to the rights already acquired by the plaintiff under Ex.P1. For the notice issued by the plaintiff under Ex.P5 asserting his right under Ex.P1-agreement and the payment of entire consideration, the defendants have not come up with any reply. The 2nd defendant, who entered into an agreement with the 2nd defendant subsequent to the assignment in favour of plaintiff cannot lay claim over rights which had been already assigned in favour of the

plaintiff. Therefore, the 2nd defendant is not entitled to interfere or infringe any <https://www.mhc.tn.gov.in/judis> C.S.No.23 of 2002 copyright acquired by the plaintiff under Ex.P1 Assignment Agreement. Accordingly, the suit claim is proved and plaintiff is entitled to decree for permanent injunction in respect of the rights as set out in the schedule to the plaint. The suit is decreed accordingly.

12. The suit is decreed and the plaintiff is entitled to decree for permanent injunction as prayed for. In the facts and circumstances of the case, there will be no order as to costs.

Index : Yes / No
NCC : Yes / No
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<https://www.mhc.tn.gov.in/judis>

List of witnesses examined on the side of the plaintiff:- P.W.1. - Sanjay A Wadhwa HUF-II, Kartha of Plaintiff List of documents marked on the side of the plaintiff:-

Sl. No.	EXHIBTS	DATE	DESCRIPTION
1.	P1	09.05.2000	Agreement between Plaintiff and D-
2.	P2	09.05.2000	Lab Letter issued by D-1
3.	P3	24.10.2001	Letter from D-1 to Plaintiff
4.	P4	10.11.2001	Notice from D-1
5.	P5	15.11.2001	Reply from Plaintiff
6.	P6		Paper Advertisements
7.	P7		Export Documents of the Plaintiff
8.	P8	07.05.2001	Letter from D-1 to D-2
9.	P9	29.12.2001	Notice from D-1 to D-2 by Telegram
10.	P10	26.03.2001	Agreement between D-1 to D-2

List of witness examined on the side of the Defendants:-

-NIL-

List of documents marked on the side of the Defendants:-

-NIL-

<https://www.mhc.tn.gov.in/judis> C.S.No.23 of 2002 S.SOUNTHAR, J.

dm Pre-delivery judgment made in C.S.No.23 of 2002 05.06.2023 <https://www.mhc.tn.gov.in/judis>