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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of Decision: 11<sup>th</sup> July, 2022*

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CS(COMM) 191/2022

JA ENTERTAINMENT PVT LTD

.....Plaintiff

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Achuthan Sreekumar, Mr. Ameet Naik, Ms. Madhu Gadodia, Ms. Megha Chandra, Mr. Rohil Bansal and Mr. Sujoy Mukherjee, Advocates.

versus

MS SITHARA ENTERTAINMENT & ORS.

.....Defendants

Through: Mr. Amit Sibal, Senior Advocate with Mr. Aurup Das Gupta, Mr. Rohan Thawani, Mr. Vinay P. Tripathi, Mr. Saksham Dhingra and Mr. Mayank Bhargava, Advocates for D-1.

Mr. Jayant Mehta, Senior Advocate with Mr. Dhiraj Mhetre, Mr. Sanampreet Singh, Mr. P.D.V. Sikar and Ms. Sonali Mehta, Advocates for D-2.

Mr. Achyuth Ajithkumar, Advocate for D-3 and 4.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**JUDGEMENT**

**JYOTI SINGH, J.**

**I.A. 4813/2022** (under Order 39 Rules 1 and 2, CPC, by Plaintiff)  
**6039/2022** (under Order 39 Rule 4, CPC, by Defendant No. 1), **6078/2022**  
(under order 39 Rule 4, CPC, by Defendant No.2)

1. Present suit has been filed by the Plaintiff seeking permanent injunction restraining Defendants No. 1 and 2 and all others acting on their behalf from making, producing, exhibiting or communicating to the public

the suit film (as described hereinafter) or any part thereof in any manner, including but not limited to theatres, television, OTT platforms, etc., so as to infringe Plaintiff's copyright in respect of Remake and Dubbing Rights of the Malayalam film in Hindi language.

2. Case of the Plaintiff as set out in the plaint is that in or around March, 2020, Plaintiff's creative team came across a Malayalam film 'Ayyappanum Kozhiyum', which was released on 07.02.2020 and was a huge success commercially. Plaintiff decided to remake the film in Hindi language and being a commercially lucrative venture, Plaintiff approached the producer of the film, i.e., Defendant No. 3 and Late Kovakattu (Defendant No. 4 herein is the wife of Late Kovakattu) and sought assignment of Hindi Remake Rights in the Malayalam film.

3. Pursuant to negotiations, an Assignment Agreement was executed on 13.05.2020, between Plaintiff and Defendant No. 3 and Late Kovakattu, under which Hindi Remake Rights in the Malayalam film were assigned to the Plaintiff. It is averred that under the said Agreement, Plaintiff was assigned the exclusive, perpetual and irrevocable 'Remake and Dubbing' rights, to be exercised in all modes, mediums and formats. The rights assigned, to the extent relevant for the present case included: (a) the sole right to make a new cinematograph film based on the Malayalam film in Hindi language; (b) right to dub the Malayalam film as well as the Hindi remake in any or all languages; and (c) right to subtitle in any language for any purpose through any media. Around July, 2020 Plaintiff commenced pre-production of the Hindi Remake in accordance with rights granted under the Agreement dated 13.05.2020.

4. On or around 04.03.2022, Plaintiff came across a trailer of a Telugu film on YouTube, titled 'Bheemla Nayak' (hereinafter referred to as the 'suit film'), dubbed in Hindi, though the release date was not announced. Since this indicated a potential infringement of Plaintiff's rights, Plaintiff immediately enquired from Defendant No. 3 about the nature of rights assigned to Defendant No. 1, i.e., the producer of the suit film. Defendant No. 3, in response, clarified that only limited rights had been assigned to Defendant No. 1 to remake the Malayalam film in Telugu language and also supplied a copy of Assignment Agreement dated 18.03.2020, executed between Defendant No. 3 and Defendant No. 1.

5. Plaintiff was categorically informed that Defendant No. 1 wanted to expand the scope of rights under the Agreement dated 18.03.2020 and had circulated an amended version of the Agreement to include clause 3, so as to acquire rights of dubbing beyond the Telugu language, but Defendant No. 3 had refused to execute an amended Agreement.

6. However, on learning that exploitation rights of the suit film had been assigned to one Goldmine Telefilms Pvt. Ltd., Plaintiff sent a Legal Notice highlighting its rights and called upon Defendant No. 1 to cease and desist from releasing the suit film in theatres or through any other mode or medium, as that would amount to infringement. On receiving a reply to the Notice from Defendant No. 1 stating that by virtue of being the producer of the Telugu remake suit film, Defendant No. 1 was the copyright owner, Plaintiff had no option but to approach this Court.

#### **CONTENTIONS RAISED ON BEHALF OF THE PLAINTIFF**

7. The Malayalam film of which Defendants No. 3 and 4 are equal owners is a copyrighted work within the meaning of Section 13 of the

Copyright Act, 1957 (hereinafter referred to as the 'Act') and they are thus entitled to exploit the copyright in a manner they deem fit. Exercising their rights, Defendant No. 3 and Late Kovakattu assigned certain rights in favour of the Plaintiff, which rights amongst others included the right to Remake and Dub the Malayalam film in Hindi language and were in the nature of limited derivative/adaptation rights *qua* Hindi language.

8. The rights assigned to Defendant No. 1 under the Agreement dated 18.03.2020 were a separate set of limited derivative/adaptation rights in the Malayalam film which did not include Remaking and Dubbing rights in Hindi language. The rights were restricted to Remaking and Dubbing the Malayalam film into Telugu language and subtitling in all languages. Thus, Defendant No. 1's act of dubbing the suit film in Hindi language amounts to infringement of Plaintiff's copyright.

9. The suit film being a derivative work, admittedly derived from the Malayalam film and/or its underlying works will be protected by copyright only to the extent provided under Section 14(1)(d) of the Act. Since the assignment in favour of Defendant No. 1 was only partial, Defendant No. 3 remained the owner of the rights not assigned to Defendant No. 1, by virtue of provisions of Section 18 of the Act. Reliance was placed on the judgments in *The Wellington Cinema v. The Performing Right Society Ltd., 1937 SCC OnLine Bom 14* and *British Actors Film Company Ltd. & Ors. v. Glover, [1918] 1 K.B. 299*. Once the rights accruing to Defendant No. 1 are read in light of Sections 14 and 18 of the Act, it is clear that Defendant No. 1 had no right to utilise the script of the Malayalam film for any purpose other than Remaking and/or Dubbing in Telugu language only. Reliance was placed on *James Stewart v. Sheldon Abend, 1990 SCC*

***OnLine US SC 65, Terry Gilliam et al. v. American Broadcasting Companies Inc., 538 F. 2d 14 (1976) and G. Ricordi & Co. v. Paramount Pictures, Inc., 189 F. 2d 469 (1951).***

10. A bare perusal of the Assignment Agreement dated 18.03.2020, specifically clauses 1, 2, 3 and 12, shows that the only right assigned was to Remake and Dub the film in Telugu and no other language and a commercial understanding to a contract is the only way the effect of a contract must be interpreted, as held in ***Bangalore Electricity Supply Company Limited (BESCOM) v. E.S. Solar Power Private Limited and Others, (2021) 6 SCC 718***. The right to dub is a separate right under the bundle of rights forming a copyright in a work and it cannot be said that assignment of a right to remake a film would include right to dub the same in any language. Heavy reliance was placed on the Judgement in ***Thiagarajan Kumararaja v. Capital Film Works (India) Pvt. Ltd. and Another, 2017 SCC OnLine Mad 37588***.

11. The suit film is not a 'completely new work' vesting in Defendant No.1 an independent copyright, as the same is admittedly a 'Remake' of the Malayalam film and mere cosmetic alterations cannot give a 'new work' flavour to the Telugu film. The burden to prove that the Telugu film is so different from the Malayalam film so as to constitute a 'new work', is on the Defendants, which they have failed to discharge on the threshold of 'Test of Substantial Similarity' laid down in ***R.G. Anand v. M/s. Delux Films and Others, (1978) 4 SCC 118*** and ***Arbaaz Khan Production Private Limited v. Northstar Entertainment Private Limited & Ors., 2016 SCC OnLine Bom 1812***.

12. Plaintiff is the owner of the right to remake the Malayalam film in Hindi language under the Agreement dated 13.05.2020 and thus, Defendant No.1's act of remaking the Malayalam film into Telugu language and thereafter dubbing the same into Hindi language effectively amounts to remaking the Malayalam film into Hindi language and amounts to infringement of Plaintiff's copyright under the Act. Copyright is a right *in rem* and owner of a copyright in any work is entitled to defend the same against anyone who infringes that right, by virtue of provisions of Section 51 of the Act.

**CONTENTIONS RAISED ON BEHALF OF DEFENDANT NO. 1**

13. A Deed of Assignment dated 18.03.2020 was executed between Defendant No. 1 and Defendant No. 3 and Late Kovakattu. Defendant No. 1 acquired copyrights in the story and for re-making and dubbing the Malayalam film into Telugu language and subtitling rights into all Indian and world languages, without any geographical restrictions as well as to exploit the same throughout the world in all formats and media. The assignment thus included the right to exploit the remade Telugu film in all formats including by dubbing in all other languages. All copyrights which emanate from the remade suit film vest solely and exclusively with Defendant No. 1 alone and none else.

14. The Assignment Deed categorically sets out that the Assignors will have no rights whatsoever over the film produced in Telugu language. Furthermore, no limitations as envisaged under Section 18 of the Act have been placed over the rights assigned to Defendant No. 1 and nor is there a negative covenant in the said Deed which restricts Defendant No. 1 from exploiting the rights in the remade film. Defendant No. 1 is, in fact, the

owner of the entire bundle of copyrights in the remade Telugu film. Under Section 13(1)(b) read with Section 13(3)(a) of the Act, every cinematograph film is a 'work', in which copyright subsists, unless a substantial part of the film is an infringement of copyright in another work.

15. On a conjoint reading of Section 17 with Section 2(d)(v) and 2(f) of the Act, it is explicit that owner of the copyright in the Telugu film will be its author i.e., the producer of the film, which is Defendant No. 1 and thus, it has exclusive rights under Section 14(d) of the Act, which would include the right to communicate the film to the public under Section 14(d)(iii). Inherent in the right to communicate is the right to communicate by dubbing in all languages. This is clear from the observations of the Madras High Court in ***Thiagarajan Kumararaja (supra)***. Owner of copyright in a cinematographic work, *inter alia*, has a right to both subtitle and dub its work, though subject to any restrictive condition being put by the parties concerned.

16. Allegations of infringement of Plaintiff's copyright are misplaced and baseless. Defendant No. 1 has not dubbed the Malayalam film in Hindi language and has only dubbed the remade suit film, under the exclusive right to do so by virtue of the Deed of Assignment. Under the Assignment Deed dated 13.05.2020, Plaintiff *inter alia* acquired the right to: (a) remake the Malayalam film in Hindi; (b) dub the Malayalam film or the remade Hindi film in any language; (c) subtitle in any language; and (d) to remake as a separate and independent work the cinematographic film as owner of copyright by virtue of rights under Section 14(d) of the Act. Alleged infringement would require to be tested on the anvil of these rights and when so examined it is crystal clear that dubbing the remade Telugu film in Hindi cannot even remotely amount to infringement of Plaintiff's copyrights. The

test of infringement is not the degree of similarity between Telugu film dubbed in Hindi and the Malayalam film dubbed in Hindi and, therefore, the question that is to be posed is whether dubbing the Telugu film in Hindi, in order to communicate it to the public, is an exclusive right of the Plaintiff. If the answer is in the affirmative, Plaintiff may have a cause of action. Clearly, no such right has been assigned to the Plaintiff and on the contrary, it is the exclusive right of Defendant No. 1 as producer of the Telugu film to dub the Telugu film in Hindi. In the absence of a right, Plaintiff can make no claim of infringement against Defendant No.1.

17. The suit film has a new name and star cast and is in a different language, though the script is similar to the Malayalam film and thus the copyrights of the respective films are distinct and constitute separate work. Deed of Assignment dated 18.03.2020 sets out that the Assignors will have no rights over the remade film, produced and dubbed in Telugu language and subtitled in various languages, without geographical restrictions. There is nothing in the Agreement which prevents or restricts the right of Defendant No.1 from dubbing the suit film into a language of its choice, including Hindi. Defendants No. 3 and 4 cannot claim the right to dub the remade suit film into Hindi as they have expressly given up all rights in the Telugu film including the right to communicate by dubbing and Plaintiff cannot claim better rights than them. In any event, Plaintiff does not even claim any relief for the remade Telugu film and admits in the reply to the application being I.A. 6078/2022, filed by Defendant No. 2 that remade Telugu film has a completely new and different star cast and is based on re-worked screenplay, dialogues, direction and music composition. Plaintiff has also admitted in para 28 of the plaint that the Agreements dated 18.03.2020



and 13.05.2020, respectively, operate in two completely different areas and there is no ambiguity and/or overlap in the rights granted to the Plaintiff on one hand and Defendant No. 1 on the other hand.

18. Plaintiff has sought to rely on the amendment sought in the Agreement dated 18.03.2020 and non-execution of the amended Agreement, to contend that Defendant No. 1 had no rights under the executed Agreement to dub the suit film in Hindi. This contention is misconceived in as much as an unexecuted document does not have the effect of novation of a signed agreement and moreover is of no consequence as the executed Agreement dated 18.03.2020 confers the right to dub the suit film into all languages including Hindi. It is wrong for the Plaintiff to contend that Defendant No. 1 attempted to expand the scope of acquired rights under the Agreement dated 18.03.2020, to include dubbing rights in Hindi by insertion of clause 3 and amendment of the Agreement, but remained unsuccessful. If Defendant No. 3 intended to circumscribe/restrict the dubbing right of Defendant No. 1, then the executed Agreement would have clearly and expressly contained a negative covenant to the effect. Section 2(d)(v) defines 'author' to mean in relation to a cinematograph film, the producer. Section 2(f) defines 'cinematograph film' to mean any work of visual recording and includes a sound recording accompanying such visual recording. 'Producer' is defined in relation to a cinematograph film a person who takes initiative and responsibility for making the work. Section 17 of the Act provides that the author of a work shall be the first owner of the copyright therein. Therefore, the producer of a cinematograph film is the author and the author is the first owner of the copyright and Section 14 enumerates the exclusive copyrights, which in case of a cinematograph film would include the right to

communicate the film to public. Section 13(1)(b) stipulates that copyright shall subsist in the cinematograph films while Section 13(3) carves out an exception that if a substantial part of the film is an infringement of copyright in another work, the copyright shall not subsist. Section 51 of the Act lists out the contingencies where the copyright is infringed. Holistic reading of these provisions shows that Plaintiff is bound to show that it has the copyright to make a Telugu remake of the Malayalam film in order to allege infringement by Defendant No. 1, who has made a remake of the Malayalam film in Telugu language and it is the latter which it is dubbed in Hindi. Plaintiff is unable to show any right, leave alone exclusive right under Section 14 of the Act allegedly infringed by Defendant No. 1. In fact, Plaintiff has no locus to file the present suit against Defendant No. 1 as there are no pleadings disclosing which copyright, vesting in the Plaintiff, has been infringed by Defendant No. 1, who admittedly has not remade the original Malayalam film in Hindi. Reliance is placed on the judgment in ***Thiagarajan Kumararaja (supra)*** for the proposition that producers being the authors are entitled to ownership of cinematograph film and would have all the rights therein, as conferred under Section 14 (d)(iii) of the Act, which would include the right to dub. Reliance was also placed on ***Shanthi Thiagarajan v. K. E. Gnanavel Raja and Ors. 2021 SCC OnLine Mad 5341*** to contend that once the rights are conferred to remake a movie in a particular language, the right to dub the movie which is remade cannot be questioned and no suit can be filed by the assignor alleging infringement of copyright.

19. The case of the Plaintiff, as reflected from the pleadings, is predicated primarily on the alleged commercial loss or disadvantage that would occur

to the Plaintiff due to launch of the suit film dubbed in Hindi. Such speculative averments can have no consequence in law, besides the fact that Defendant No. 1's Telugu film with a different cast, screenplay etc. would possibly have no impact on the viability of Plaintiff's proposed film. Commercial viability is wholly irrelevant as long as provisions of the Copyright Act are not violated and a claim for infringement is not made out. Reliance is placed on the judgment in *M/s. Sunder Pictures Circuit and Another v. Moti Mahal Theatres and Ors., 1965 SCC OnLine AP 295*.

**CONTENTIONS RAISED ON BEHALF OF DEFENDANT NO.2**

20. Deed of Assignment was executed between Defendant No. 3 and Defendant No. 1, wherein Defendant No. 1 was granted complete and absolute copyright of the story of the Malayalam film to remake the same in Telugu language. Defendant No. 1 remade the Malayalam film in Telugu language with a completely new and different star cast, lyrics, reworked screenplay, dialogues, etc. Subsequent thereto, on 16.04.2021 a Film Assignment Agreement was executed between Defendant No. 1 and Defendant No. 2, whereby Defendant No. 1 assigned the Dubbing Rights in the suit film in Hindi and North Indian languages in favour of Defendant No. 2 and the Hindi dubbed version of the suit film was set to release on 31.03.2022.

21. Defendant No. 3 is the author and first owner of the Malayalam film having all rights as provided under Section 14 of the Act, including the right to remake the film in Telugu language and dubbing in any language, with no negative covenant(s) thereunder. Defendant No. 1 having an unencumbered right in the Telugu film has assigned the right to dub the same in Hindi language to Defendant No. 2. In these circumstances, even Defendant No. 3

cannot claim rights in or impose any restrictions on the Telugu film, which constitutes ‘new work’, much less the Plaintiff, who has no right in the Telugu film, so as to allege infringement against Defendants No. 1 and 2.

22. Copyright in the cinematograph work, i.e., the Malayalam film, vested in Defendant No. 3 and not the Plaintiff, whose rights in the said film, are restricted to those assigned under the Assignment Deed. Para 9 (iv)(a) of the Plaint sets out the salient features of the assignment in favour of the Plaintiff, which as encapsulated and relevant for the present case, confers a right to remake the Malayalam film in Hindi and has nothing to do with a Remake of the said film in Telugu. The arguments of the Plaintiff also overlook the fact that Defendant No. 3 is not a holder of rights in the Telugu remake film and therefore, the Plaintiff cannot claim better rights than Defendant No. 3. Moreover, in para 10 of the Plaint, Plaintiff has pleaded that it has commenced only pre-production of the Hindi remake, thereby admitting that no film has been made at present and the apprehensions are based on mere speculations.

23. Plaintiff is unclear of the rights it is seeking to assert, i.e., copyrights or contractual. If copyrights are asserted, then such rights must reside in a work, which in the present case does not exist as no film has been made so far by the Plaintiff. In case a contractual right is enforced, then there cannot be a suit for copyright infringement. Pertinently, once Plaintiff itself admits in its reply to I.A. 6078/2022 that the suit film is a completely new and different film, it constitutes ‘new work’ in terms of the judgment in ***Eastern Book & Ors. v. D.B. Modak & Anr., (2008) 1 SCC 1***, with all copyrights that a ‘owner’ has under the Act.

**CONTENTION ON BEHALF OF THE PLAINTIFF, IN REJOINDER:**

24. Reading of Section 13 (1) and (3) and Section 18(2) of the Act shows that where a copyright is assigned, the rights have to be positively assigned and cannot be implied or presumed. The agreement dated 18.03.2020 between Defendant No. 3, Defendant No. 4 and the Plaintiff shows that limited rights were assigned, i.e., remaking and dubbing in Telugu language only, which is evident from the various Clauses of the Assignment Deed. It is a settled law that copyrights can only be assigned in writing by a Deed of Assignment and thus the rights that flow to the assignee must also emanate from the Assignment Deed and Defendant No. 1 cannot claim any right outside the Assignment Deed dated 18.03.2020.

**ANALYSIS AND FINDINGS:**

25. Having heard learned counsel for the Plaintiff and learned Senior Counsels for the Defendants, the question that comes to fore is whether dubbing the Telugu film in Hindi by Defendant No. 1 constitutes infringement of Plaintiff's rights under the Copyright Act. In order to examine the said question, it would be relevant to examine the Scheme of the Act and the provisions therein, to the extent relevant to this case.

26. The Copyright Act of 1957 repealed and replaced the Indian Copyright Act of 1914. Section 2(y)(ii) of the Act defines 'work' as follows:

***"2. Interpretation.— In this Act, unless the context otherwise requires,—***

*(y) "work" means any of the following works, namely:-*

*(ii) a cinematograph film."*

27. 'Cinematograph film' means any work of visual recording and includes the sound track, if any, and is defined as under:

***“2. Interpretation.—In this Act, unless the context otherwise requires,—***

*(f) “cinematograph film” means any work of visual recording and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films. ”*

28. The works in which a copyright subsists are enumerated in Section 13 and to the extent relevant, provisions of the said Section are as under:

***“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,—***

*(b) cinematograph films; and”*

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*(3) Copyright shall not subsist—*

*(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work. ”*

29. Meaning of copyright is provided under Section 14 of the Act and for the purpose of cinematograph film copyright means to do or authorize the doing of any of the following acts:

***“14. Meaning of Copyright.— For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely-***

*(a) in the case of a literary, dramatic or musical work, not being a computer programme,—*

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*(iv) to make any cinematograph film or sound recording in respect of the work;*

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(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.”

30. Section 17 of the Act provides that the author of a work shall be the first owner of the copyright therein and the relevant portion is extracted hereunder for ready reference:

**“17. First owner of copyright.** — Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: .....

31. It thus becomes imperative to understand who is the ‘author’ under the provisions of the Act. Section 2(d)(v) defines author in relation to a cinematograph film to mean the producer. ‘Producer’, in turn, is defined in Section 2(uu) in relation to a cinematograph film, as a person who takes the initiative and responsibility for making the work.

32. Quite clearly, from a conjoint reading of Sections 17, 2(d)(v) and 2(uu) of the Act, what emerges is that the author of a work is the first owner of the copyright and in relation to a cinematograph film, the producer is the author and thus the first owner of the copyright therein. Under the provisions of Section 14(a)(iv), author of a work has a right to make a cinematograph film and Section 14(d) provides the rights that the author would have in the said film which *inter alia* including right to communicate the film to the

public. The expression ‘communication to the public’ has been defined under Section 2(ff) of the Act and is as under:

**“2. Interpretation.—** *In this Act, unless the context otherwise requires,—*

*(ff) “communication to the public” means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.*

*Explanation.— For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.”*

33. Section 18 deals with assignment of the copyright as under:

**“18. Assignment of copyright.—** *(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:*

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*(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.”*

34. Section 51 enumerates eventualities in which copyright in a work shall be deemed to be infringed and relevant portion is as follows:



***“51. When copyright infringed.— Copyright in a work shall be deemed to be infringed—***

*(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—*

*(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright....”*

35. Since the conundrum that is required to be resolved in the present case essentially revolves around the dubbing rights of the respective parties, it would be useful to understand the expression ‘communication to the public’. In ***Thiagarajan Kumararaja (supra)***, the Division Bench of the Madras High Court held that dubbing would fall within the ambit of the expression ‘communicating to the public’ while interpreting the expression ‘otherwise enjoyed’ in Section 2(ff) of the Act. Relevant would it be to refer to the following paras in this context:

*“17. In other words, it makes available to the producer/author, the right to make a cinematograph film available for being seen or heard or enjoyed by public directly or by any means of display or diffusion.*

*17.1. The use of the expression “otherwise enjoys” after the words seen or heard enlarges the scope of how communication with the public has to be made. If this was not so, the Legislature would have restricted the communication to aspects which are relatable to the obvious sensory attributes of human beings such as hearing and seeing. The Legislature it seems consciously has enlarged the scope of the expression “communication to the public” by bringing in the aspect of enjoyment. **Dubbing would, thus, in our view, fall within the ambit of the expression communicating to the public.***

*18. In the context of a film, undoubtedly, dubbing involves embedding a sound track in a film, which is in a language*

*different from that of the original. [See Concise Oxford Dictionary, Tenth edition (Revised) at page 440]*

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*18.2. Therefore, while the translation of the literary work is carried out ordinarily by using a writing medium, dubbing involves the use of the sound track. The question, which, thus, comes to fore is whether the producer or the author of a cinematograph film is conferred with right to dub?*

*18.3. To our minds, the answer has to be in the affirmative, as the right in a cinematograph film is independent to the right that a person may have in the underlying works, such as, the story, the script and/or the screenplay. In some cases, it may so happen that each of these rights vest in different persons. On the other hand, there could be a case, where, one or more rights vest in the same person.*

*18.4. In the instant case, admittedly, the story, the script and the screenplay was written by the appellant, and hence, the authorship qua them vests in him. The appellant, agreed to make a film with the help of respondents. The initiative and responsibility in respect of the same was, admittedly, taken by the respondents. The appellant was paid a sum of Rs.7,00,000/-. Therefore, quite clearly, in so far as the subject cinematograph film is concerned, the producers, being its authors', are entitled to its ownership. **The respondents, therefore, as the producers/authors of the cinematograph film, in our view, would have all the rights in the subject film as conferred under Section 14(d)(iii) of the 1957 Act, which would include the right to dub.***

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***18.6. In short, the principle being that the owners of copyright in a cinematographic work will, inter alia, have the right to both sub-title and dub their work. This of-course, is subject to any restrictive condition being put in by the parties."***

***(emphasis supplied)***

36. At this stage, it is pertinent to note that it is not the case of the Plaintiff that the Telugu film made by Defendant No. 1 infringes the copyright of the Plaintiff. No relief, as rightly argued by the Defendants, is claimed against the remade Telugu film and in fact it is an admitted case by the Plaintiff that the remade Telugu/suit film titled 'Bheemla Nayak' has a completely new and different star cast, screenplay, dialogues, direction and music composition. The dispute centres on the dubbing of the Telugu film in Hindi language by Defendant No. 1, which according to the Plaintiff infringes its copyright. While it is the case of the Plaintiff that Defendant No. 3 had assigned restricted right to Defendant No. 1 to remake and dub the Malayalam film in Telugu language only and did not include the right to dub in any language as also that the suit film is not a 'new work' entitled to an independent copyright therein, the case of the Defendants is that there subsists a separate and independent copyright in the remade Telugu film and Defendant No. 1 is the owner of that copyright having the right to exploit the film in all formats, including dubbing the same in any language.

37. In order to test the respective arguments, it would be necessary to examine the nature of assignments in favour of the Plaintiff and Defendant No. 1 under the respective Deeds of Assignment executed by Defendant No. 3. Relevant paragraphs of the Deed of Assignment executed between Defendant No. 3 and Defendant No. 1 on 18.03.2020 are as under:

***“NOW THIS AGREEMENT WITNESSES AS FOLLOWS:***

*The ASSIGNORS do here by these present grant, assign, convey and transfer to the ASSIGNEES, the complete, absolute and exclusive copy right of the said story of the Malayalam Feature film AyyappanumKoshiyum starring Prithviraj, BijuMenon and others., directed by Sachy and produced by Mr. Ranjith and P*

*M Sasidharan for remake and dub into Telugu language and subtitle into Indian and all world languages without any geographical restrictions and to exploit the said remake and dub version and subtitled version film for and throughout the world on all the formats mentioned above for a Forever period and ASSIGNORS have irrevocably agreed not to entrust, assign and or transfer the Telugu language rights of the said picture to any other person or party and the ASSIGNORS have irrevocably agreed and confirmed to assign and transfer of the entire Remaking and Dubbing and subtitling rights of Telugu languages rights of the said picture to the ASSIGNEES herein. The ASSIGNORS will have no rights whatsoever over the film produced and dubbed in Telugu language and subtitled in Indian and all world languages without any geographical restriction which is produced and dubbed based on the assigned rights.*

- 1. WHEREAS the ASSIGNEES have agreed to acquire the remaking and dubbing and subtitling rights of the film for producing and dubbing in Telugu language based on the transfer of the copy right of the story by the ASSIGNORS in favour of the ASSIGNEES and have entered into this agreement and acquired the remake and dubbing and subtitling rights for Telugu language of the said story of the said picture, AyyappanumKoshiyum starring Prithviraj, Biju Menon and Others and directed by Sachy and produced by Mr. Ranjith and Mr. PM Sasidharan.*

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- 3. The ASSIGNORS have assigned all copy rights of the said story of the Malayalam Feature film AyyappanumKoshiyum in favour of the ASSIGNEES to remake and dub into Telugu language and subtitle into all indian and all world languages and to exploit the same throughout the world in entire format and the ASSIGNEES shall have the full rights to deal, sell and enjoy the benefits with the copy right. The ASSIGNEES shall have all the rights to alter, delete, add, modify the story and screenplay of the said picture in any manner to suit the convenience of the ASSIGNEES.*

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12. *The ASSIGNEE reserves the rights to exploit / sell / distribute / re-assign the assigned Telugu language Dubbing and remaking rights and subtitling rights to anybody any manner he think fit. ”*

38. Perusal of the above recitals would show that Defendant No. 3 being the absolute owner of the original copyright of the story and producer of the Malayalam film, as an Assignor assigned to Defendant No. 1 the entire rights for Remaking and Dubbing the said film in Telugu language and subtitling in all Indian and world languages. Additionally, Assignee was given the right to alter, delete, add, modify the story and screenplay of the Malayalam film in any manner to suit the convenience of the Assignee/Defendant No. 1. The Assignment Deed also reflects that the Assignors renounced all their rights whatsoever over the film ‘produced’ and dubbed in Telugu language and subtitled in all world languages, without any geographical restriction.

39. On the other hand, under the Deed of Assignment dated 13.05.2020, executed between the Plaintiff and Defendants No. 3 and Late Kovakattu, the following covenants are relevant:

*“Whereas, the Assignee is, inter alia, engaged in the business of production of cinematograph films. Whereas the ASSIGNEE wants to acquire from the ASSIGNOR on an exclusive, perpetual and irrevocable basis, the Remake and Dubbing Rights (defined below) of the Film for the Language (as defined below) for the territory of the world, to be exercised by the Assignees on all Modes, Mediums and Formats not known or coming into existence in the future. For the purpose of this Agreement, “**Remake and Dubbing Rights**” shall mean the sole and exclusive right to (i) make a new cinematograph film based on the Film and the underlying works thereof (“**New***

**Film**”) in the Hindi language (**“Language”**) and (ii) the right to dub the Film in any and all languages now known or coming into existence in the near future (**“Dubbed Film”**). The Remake and Dubbing Rights shall further include without limitation the sole and exclusive rights viz. : (i) The exclusive right to produce, co-produce the New Film in the Language based on the literary works of the said Film; (ii) The right to use the title of the Film and underlying works therein including but not limited to the literary works in the New Film with/without adaptations, mutilations or modifications, as the case may be, at the sole discretion of the Assignee; (iii) The right to exploit the New Film/Dubbed Film and exploitation rights of the New Film/Dubbed Film on all available on all Modes Mediums and Formats, platforms of exploitation, present and/or future in perpetuity including but not limited to theatrical, non-theatrical, satellite, home video, DTH, on demand, mobile, digital, internet, broadband, website etc.; (iv) The right to use the characters, story lines, titles, characterizations with or without sound accompaniment and with or without the interpolation of musical numbers therein to adapt, rearrange and make any changes in, deletions from or additions to the underlying works of the said Film, to change the sequence thereof, to use a portion or portions of any underlying works, to change the characters and the description of the characters of the said Film, to use any component, underlying work of the said Film; (v) the right to dub the New Film/Film in any language currently existing or coming into existence in the future; (vi) The right of edit, clip right of the New Film/Dubbed Film, right to sub-titling, in any language for any purpose through any media; (vii) The rights to use excerpts, summaries and extracts of the New Film/Dubbed Film in any form such as books, posters, news items, trailers, etc. for purpose of exploiting, promoting the New Film/Dubbed Film in the Language; (viii) All other ancillary rights, including without limitation to derivative rights, in the New Film, Dubbed Film and all underlying works thereof; (ix) The right to recreate and/or use any theme music and/or any background music of the Film for the New Film; (x) The right to exercise and enjoy

*all rights comprised in copyright in the New Film and the Dubbed Film as first owner thereof, including the right to register and secure copyright, trademark and domain name registrations and renewals in the Assignee's name and expense throughout the Territory and; (xi) All other ancillary rights in the underlying works of the New Film;*

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## **2. GRANT OF RIGHTS**

*2.1. The Assignor, declaring itself as the true, legal and beneficial owner of the remake rights in the Film hereby irrevocably, unconditionally and exclusively grants, assigns, sells, conveys and transfers to the Assignee solely and absolutely, 100 (one hundred) % of the Remake and Dubbing Rights (Hindi), as defined above, in perpetuity throughout the world with respect to the Film and the New Film. The ASSIGNOR do here by these presents, grant, assign, convey and transfer to the ASSIGNEE, on an exclusive, perpetual and irrevocable basis, the complete, absolute and exclusive Remake and Dubbing Rights in the Film to produce, create, distribute, market and exploit the New Film and Dubbed Film without any geographical restrictions i.e across all territories of the world and in perpetuity in all Modes, Mediums, Formats, platforms etc. and ASSIGNOR has irrevocably agreed not to entrust, assign and or transfer the Remake and Dubbing Rights in the Film to any other person or party other than the Assignee for the territory of the world and in perpetuity. The ASSIGNORS will have no rights whatsoever over the New Film or any underlying works thereof."*

40. It is explicit from a reading of the Deed of Assignment that the Remake and Dubbing rights assigned to the Plaintiff by Defendants No. 3 and Late Kovakattu in the Malayalam film *inter alia* were to make a new cinematograph film based on the Malayalam film and the underlying works thereof (New Film) in Hindi language and the right to dub the Malayalam film in any and all languages known or coming into existence in the near

future (Dubbed Film). Plaintiff was also assigned the right to dub the New Film in any language existing or coming into existence in future, which needless to state included dubbing in Hindi language.

41. As held by the Andhra Pradesh High Court in *M/s. Sunder Pictures (supra)* copyright in a work as envisaged in the Act consists of a number of rights and there can also be different assignees in respect of different rights. In respect of any of the rights which may be assigned, assignee shall be treated as owner of the copyright for the purpose of this Act. In *Thiagarajan Kumararaja (supra)*, the Division Bench held that the owner of a copyright in a cinematograph film will *inter alia* have the right to both subtitle and dub its work, subject to any restrictive condition being put by the parties.

42. The primordial grievance of the Plaintiff is that Defendants No. 3 and Late Kovakattu while assigning the copyright to remake the Malayalam film in favour of Defendant No. 1, had restricted the remaking and dubbing to Telugu language and therefore this restrictive covenant prevents Defendant No. 1 from dubbing the Telugu remake in Hindi. Therefore, according to the Plaintiff the act of dubbing the suit film in Hindi violates and infringes the copyright of the Plaintiff. Needless to state, the argument has to be tested in the light of the relief claimed by the Plaintiff in the present suit and in this context, the prayer clause is extracted hereunder for ready reference:

*“42.(a) An order for permanent injunction restraining the Defendant nos. 1 and 2, by themselves, their servants, agents, licensees, franchisees, partners, proprietors or any one claiming through, under or by them, and/or otherwise, from making, producing, exhibiting, or communicating to the public the suit film or any part thereof in any manner, including but not limited to theatres, television, OTT platforms and/or internet, so as to infringe the Plaintiff’s copyright in respect of*



***the Remake and Dubbing Rights of the Malayalam film in the Hindi language as also any other rights as set out in paragraph 19(iv) of the plaint. ”***

43. On a plain reading of the prayer clause, it is evident that Plaintiff seeks an injunction against Defendants No. 1 and 2 from making, producing, exhibiting or communicating to the public the suit film or any part thereof, in any manner, so as to infringe Plaintiff’s copyright in respect of ‘Remake and Dubbing rights’ of the Malayalam film in Hindi language as also other rights detailed in para 19(iv) of the plaint. Therefore, what is required to be seen is the Remake and Dubbing rights that were assigned to the Plaintiff by Defendant No. 3 in the Malayalam film. The recitals of the Deed of Assignment dated 13.05.2020, as extracted above, *prima facie* show that the ‘Remake and Dubbing rights’ *inter alia* included making a new cinematograph film and the underlying works thereof in Hindi language with the right to dub the Malayalam film as well as the New Film in any and all languages known or coming into existence in the near future. Admittedly, the Plaintiff was not assigned the right to remake the Malayalam film in Telugu language, which was a right assigned to Defendant No. 1 by Defendant No. 3. It is also not the case of the Plaintiff that Defendant No. 1 is dubbing the Malayalam film in Hindi and at the cost of repetition it may be noted that Plaintiff has no grievance with remaking of the Malayalam film in Telugu. Defendant No. 1, even according to the Plaintiff, is dubbing the remade Telugu film in Hindi, which has triggered the present suit.

44. Section 51 provides that a copyright in a work shall be deemed to be infringed when any person, without a license granted by the copyright owner or Registrar of Copyrights or in contravention of the licence conditions, does

anything, the exclusive right to do which is by the Act conferred upon the owner of the copyright. Simply put under Section 51 of the Act, a grievance with respect to infringement of a copyright can arise only if the exclusive right to do an act conferred upon the copyright owner is infringed. Therefore, if Defendant No. 1 had remade the Malayalam film in Hindi language or had dubbed the same in Hindi language, Plaintiff may have had a cause of action for infringement. Beyond a doubt, the case of alleged infringement would require to be tested within the four corners of the provisions of Section 51 of the Act and the limited issue at this stage that requires consideration would be the exclusive rights given to the Plaintiff under the Deed of Assignment and to see if those rights are infringed. Dubbing of the remade Telugu film into Hindi, in my *prima facie* view, does not amount to infringement of the exclusive right of the Plaintiff to remake the Malayalam film in Hindi language and to dub the New Film as well as the Malayalam film in all languages.

45. In light of the aforesaid, in my *prima facie* view, Defendants are right in their argument that the test of infringement in the present case is not the degree of similarity between the Telugu film dubbed in Hindi and the Malayalam film dubbed in Hindi, but the test is whether dubbing the Telugu film in Hindi in order to communicate it to the public infringes on any exclusive right of the Plaintiff, which is not the case here.

46. Perusal of the *ex parte ad interim* injunction order dated 31.03.2022, granted by this Court shows that the considerations that weighed with the Court while granting the injunction were the contentions of the Plaintiff that: (a) the right to remake the Malayalam film in Hindi language was exclusively vested in the Plaintiff, which was infringed by Defendant No. 1

under Section 51 of the Act; (b) Defendant No. 1 was not assigned the right by Defendant No. 3 to dub the Malayalam film or its remake in Hindi language; and (c) Plaintiff has invested considerable amount of money in the pre-production stage of its proposed Hindi remake of the Malayalam film and if the suit film is allowed to be released, commercial viability of Plaintiff's proposed film shall be considerably damaged. Reliance was placed by the Plaintiff on the judgment in ***Thiagarajan Kumararaja (supra)***, more particularly, paragraph 18 thereof.

47. After hearing the parties extensively, in my *prima facie* opinion, none of the contentions raised by the Plaintiff at the time of grant of *ex parte ad interim* injunction hold water in law. Plaintiff, no doubt, has a right to remake the Malayalam film in Hindi language as well as dub the same or the New Film in any language, however, Defendant No. 1 has admittedly dubbed the remade Telugu film (suit film) in Hindi, which does not infringe the Plaintiff's right, applying the provisions of Section 51 of the Act. Insofar as the contention that the Deed of Assignment in favour of Defendant No. 1 restricts the right to dub the Malayalam film or its remake in Telugu language only is concerned, as aforementioned, Defendant No. 1 is neither remaking nor dubbing the Malayalam film in Hindi language and Plaintiff can have no grievance with the manner Defendant No. 1 is exploiting its rights in the remade Telugu film. Even assuming for the sake of argument that Defendant No. 1 is violating the terms of the Deed of Assignment executed with Defendant No. 3, in terms of dubbing the remade Telugu film in Hindi, it may at the highest give rise to a cause of action in favour of Defendant No. 3, who has not chosen to sue Defendant No. 1, but cannot be the basis of an infringement action in favour of the Plaintiff.

48. As far as the commercial viability of the proposed film of the Plaintiff is concerned, as rightly argued by the Defendants, this is a factor which is wholly irrelevant to the issue of alleged violations of the provisions of the Copyright Act, under which an action for infringement can only be predicated on existence of a copyright. Both sides have placed considerable reliance on the observations of the Division Bench in ***Thiagarajan Kumararaja (supra)***, wherein the Court has essentially laid down that the producer being the author of a cinematograph film has all the rights in the film as conferred under Section 14(d)(iii) of the Act, including the right to dub and subtitle, subject, however, to any restrictive condition(s) being put by the parties. In view of the aforesaid *prima facie* finding that Defendant No. 1 is not infringing any exclusive right assigned to the Plaintiff by Defendant No. 3, this argument or the observation of the Division Bench at this stage are wholly irrelevant and need not detain the Court, any further.

49. This Court also *prima facie* finds merit in the contention of Defendant No. 1 that the ownership of the copyright in the Telugu film vests in Defendant No. 1. As brought out above, under Section 2(uu) of the Act ‘producer’ in relation to a cinematograph film means a person who takes initiative and responsibility for making the ‘work’ and the producer is the ‘author’ under Section 2(d)(v). Section 17 clearly provides that the author of a work shall be the first owner of the copyright therein and therefore, Defendant No. 1 is the owner of the copyright in the Telugu film. This is further evident from the Assignment Deed dated 18.03.2020, whereby Defendant No. 3 has referred to Defendant No. 1 as a ‘producer’ of the Telugu film and has renounced all rights in the film so produced. Since Defendant No. 1 is the owner of the copyright in the Telugu film, it shall be

entitled to the exclusive rights of a copyright owner under Section 14(d) of the Act, which would include the right to communicate the film to public under Section 14(d)(iii). As held by the Madras High Court in ***Thiagarajan Kumararaja (supra)***, the right to communicate would include the right to dub. Therefore, by the operation of law, Defendant No. 1 in its own right as a copyright owner has a right to dub the Telugu film in any language including Hindi and Plaintiff cannot assert any right to restrain Defendant No. 1 from dubbing the Telugu film in Hindi.

50. The judgments in ***The Wellington Cinema (supra)*** and ***British Actors Film Company (supra)*** were relied upon by the Plaintiff for the proposition that a copyright owner in any work may assign the right either wholly or partially and either generally or subject to limitations and may grant any interest in the right by licence. These judgments, in my view, do not come to the aid of the Plaintiff as in the present case, the assignor under the Deed of Assignment dated 18.03.2020 has assigned the rights in the suit film in favour of Defendant No.1, without any restrictions or limitations and pertinent is it to mention that the assignor has in fact renounced all its rights in the suit film in favour of Defendant No.1, which is clearly evident from the recitals in the Assignment Deed.

51. The judgments in ***James Stewart (supra)***, ***Terry Gilliam (supra)*** and ***G. Ricordi & Co. (supra)*** lay down the proposition that merely because of derivative work has been created, the pre-existing rights in the original work are not extinguished. The said judgments do not apply to the facts of the present case and cannot enure to the advantage of the Plaintiff. In the present case, as aforementioned, Defendant No.3 has assigned various rights in favour of Defendant No.1 in the suit film and after so assigning, has

renounced the rights in the newly produced film. Moreover, Plaintiff cannot raise any grievance with the exploitation of the rights qua the suit film since no rights in the said film were assigned in favour of the Plaintiff and all its rights exist qua the Malayalam film or the new film made from the Malayalam film by it.

52. For all the aforesaid reasons, the *ex parte ad-interim* injunction granted *vide* order dated 31.03.2022 is hereby vacated.

53. Needless to state, the observations and the views rendered in the present judgment are only *prima facie* and shall not affect the final adjudication of the rights and contentions of the parties in the suit after the trial is complete.

54. All the above applications are disposed of in the above terms.

**JULY 11<sup>th</sup>, 2022**  
*rk/shivam/sn*

**JYOTISINGH, J**

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