

## INTELLECTUAL PROPERTY: COPYRIGHT

Anand Patwardhan v. Director General, Directorate General of Doordarshan and Others<sup>1</sup>

The Hon'ble High Court of Bombay recently passed an order of injunction and damages of Rs. 1,000,000 for infringement of copyright in a film for which Doordarshan had the telecast rights. The issues inter alia, which arose in this case are as under:

Facts-

The Plaintiff is a documentary film maker and had made a documentary film "Waves of Revolution" (the Film) in 1975 which was telecast on Doordarshan in 1977 and thereafter the Film remained in

the archives of Doordarshan. The Film is about the student movement in Bihar in the first of the 1970s led by Jay Prakash Narayan, a freedom fighter and a revolutionary, depicting the students' revolt in Bihar. The Defendant No.4 acting on behalf of Defendants 1 to 3 made a documentary film "26th June 1975" (the Impugned Film) in 2003. The impugned film was telecast on Doordarshan on 26th June 2003.

The Plaintiff claimed that the Plaintiff had the copyright in the Film, which was breached and infringed in the making and telecast of the Impugned Film because various extracts contained in these incidents were lifted from the Film and inserted in the Impugned Film without the Plaintiff's permission or without any payment or any credit offered to the Plaintiff and without his knowledge.

<sup>1</sup> <http://bombayhighcourt.nic.in/data/judgements/2009/OSS186204.pdf>

## Issues-

The major issues which arose for the consideration of the Hon'ble Bombay High Court were:

1. Whether the Plaintiff is the Producer/ Author of the Film.
2. Whether the Plaintiff has copyright in respect of the Film and is entitled to invoke protection under the Copyright Act.
3. Whether the Defendants have pirated and plagiarized the Film or any part thereof.
4. Whether Doordarshan had acquired the telecast rights of the Plaintiff's Film for a fee of Rs.500.
5. Whether the Defendants distorted and mutilated the Film and broadcast the same by breach of trust.
6. Whether the Plaintiff suffered trauma and mental anguish upon deriving knowledge of the telecast of the Impugned Film and whether it led to defamation.
7. What relief, if any, that the Plaintiff is entitled to.

Issue (1)-Plaintiff producer of the Film: The Plaintiff had produced the certificate of the Central Board of Film Censors issued on 29th July, 1977 showing him to be the Producer of the Film. Hence, this issue was answered in the affirmative.

Issue (2)-Plaintiff's copyright: Referring to Section 2(d)(v) of the Copyright Act, 1957 (hereinafter referred to as "the Act") which states that the producer is the author of the cinematograph film and Section 17 which states that the first owner of the copyright is the author of the work, the Court observed that the Plaintiff being the producer of the Film was its author and accordingly its first owner. It thus held that the Plaintiff had copyright in his work, the Film, even without its registration as legislation relating to the copyright itself does not provide for registration, but only maintenance of the register of copyrights under Section 44 of the Act.

Issue (3)-Infringement of copyright: Answering this issue in the affirmative the Court held that the stills/shots/images from the Film are taken verbatim by Defendant No.4 in the Impugned Film. The Defendant No. 4 has simpliciter "copied". Defendants 1 to 3 have allowed and actually aided such copying by making the archives material open and available to Defendant No.4 for such copying. The Plaintiff's copyright therein is absolute and copying by the Defendants tantamounts to infringement by all of them. The following important observations were made by the Court:

- o Whilst the idea is not unique to the author, the image portrayed or the expression made is.

- Mere showing by Defendant No.4 the idea of Bihar Movement would not give the Plaintiff a right to complain of infringement of his copyright, but showing the precise stills/shots/images of the Film would bring the act of Defendants squarely within the mischief of the term infringement which denotes "reproduction" of the work in which copyright exists.
- The copyright under Section 14 is a copy of the film including a photograph of any image forming part thereof. Hence, a copy of a single photograph/frame/still/shot of a film would constitute infringement.
- It matters not that only 86 seconds of the Impugned Film is brought within the mischief of the rule against plagiarism. The shots which are copied by Defendant No.4 and incorporated in the Impugned Film show the Bihar Movement, made up of the several shots/stills/images of the Film constituting its substantial qualitative part.

Issue (4)-Assignment/License: Assignment in writing, which is mandatorily required was not shown by the Defendants. The Defendants relied upon a letter claiming it to be assignment of the Plaintiff's copyright. The letter showed the royalty contract of the

Plaintiff for the Film and payment of Rs.500 per telecast that was to be made to the Plaintiff under instructions to his office.

The Court observed that the only right granted by the Plaintiff to Defendants 1 to 3 was the right to telecast the Film upon payment of royalty for each telecast. Further, it was specifically subject to the limitation as regards the right to abridge the Film or use any excerpts therefrom. Such partial assignment of copyright, as contemplated under Section 18 of the Act, was not much different from a license contemplated under Section 30 of the Act. Hence such a license was analogous to a partial assignment or an assignment with the stipulated limitations.

The Court therefore held that there was partial assignment/license to the Doordarshan. Doordarshan could not be the full owner of the copyright in the Film. It was only licensee or part assignee of the Film to telecast it, without abridgement or use of excerpts, wholly as produced by the Plaintiff at the rate of Rs.500/- per telecast. The issue was thus answered in the affirmative.

Issue (5)-Distortion and mutilation of the suit film: The admitted fact of taking only a few shots and stills of the Film and admittedly using them as a part of the Impugned Film shows the breach of conditions of the

Plaintiff specifically agreed upon by Defendants 1 to 3. The Court thus held that such breach had caused distortion and mutilation of the Film.

Issue (6)-Defamation: The Plaintiff stated that excerpts of his Film by shots/stills/images incorporated in the Impugned Film at 6 or 7 different places by the Defendant No.4 were the various interviews of political persons who were having a diametrically different ideology than that of the Plaintiff. The Plaintiff contended that the overall effect of the production of the Impugned Film was that it had defamed the Plaintiff and lowered his image of a secular democratic person in the eyes of his relatives, friends and acquaintances and resulted in defamation.

The Court observed that the Defendant No.4 was an innocent researcher, he did not mean or intend defaming the Plaintiff and he did not know the ideology of the Plaintiff. The Court held that the Defendant No.4 had no intent to cause harm, hurt or disrepute the Plaintiff or to any other who chose to belong to a different genre. It was thus held that there was no defamation.

Issue (7)-Relief: The Court held that the Plaintiff must be held entitled to substantial damages upon infringement of copyright so far as the

theme of Bihar Movement was concerned, which was one of the causes of the declaration of Emergency. The substantial part of the Plaintiff's skill, labor and art had been appropriated and abrogated by Defendant No.4 callously though not willfully. It was observed that the Defendant No.4 personally copied the shots/stills/images from the Film and those were provided by Defendants 1 to 3 from their archives and thus all the Defendants must be held liable and responsible in damages for the infringement of the Plaintiff's copyright.

The Defendants were thus held liable to pay damages for infringement of the Plaintiff's copyright in the suit documentary film "Waves of Revolution" computed at Rs.1,000,000.

Injunction was thus granted ordering Defendants not to screen or re-screen the Impugned Film showing any stills/shots/images from the Film.

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