SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

A.S. Ahluwalia Vs. General Manager, Delhi Telephones

A.S. Ahluwalia Vs. General Manager, Delhi Telephones

SooperKanoon Citation : sooperkanoon.com/688136

Court : Delhi

Decided On : Jul-23-1983

Reported in : 29(1986)DLT143

Judge : Yogeshwar Dayal and; S. Ranganathan, JJ.

Acts : Constitution of India - Article 226

Appeal No. : Civil Writ Petition No. 331 of 1985

Appellant : A.S. Ahluwalia

Respondent : General Manager, Delhi Telephones

Advocate for Pet/Ap. : Anita Sachdeva, Adv

Judgement :

S.B. Wad, J.

(1) How far law protects creative aesthetic expression of an artist 7 Is the intellectual property of an artist governed by the game norms as commercial property Where does the freedom (of expression) of the author and, where does the Director begin What is the scope and width of section 57 of the Copyright Act, 1957? These are the questions raised in Mannu Bhandari's suit against M/s. Kala Vikas Pictures (Pvt.) Ltd. and its producer and director. Kala Vikas has produced motion picture 'Samay Ki Dhara' under assignment of filming rights of her novel

'Aap Ka Bunty.' Her complaint is of the mutilation and distortion of the novel. She pleads for permanent injunction against its screening and exhibition. Although many authors complain of such distortions, few have sought judicial protection. Hence, there is no precedent of any law court to guide the film industry.

(2) The trial court has refused an ad-interim restraint order. The appeal is against this order.

(3) At the time of the bearing it was realised that apart from the verbal allegations made by the Plaintiff and the defendants, there was considerable common ground, which if properly explored, would bring the parties to an amicable settlement. But, the plaintiff insisted that as a committed author she would like the Court to authoritatively resolve the question of the rights of the authors as the problem is repeatedly faced by the authors and there is no judicial decision The defendant's grievance, on the other band, was that they had made a hugs investment and have entered into contracts with the distributors According to the defendants, the plaintiff has filed the suit with the ulterior motive of extracting more money than that paid under the contract. Due to this extreme position taken by the parties, there was no worthwhile attempt on their part to settle the matter amicably.

(4) As the arguments proceeded, it was felt that the grievance of the Plaintiff and its treatment by the learned Additional District Judge cannot be properly appreciated without actually seeing the movie. Filming a novel is quite different from literary reproduction There is a change in the medium. The theme of the novel is conveyed through audio-visual effects. The shooting of the film was already complete but the learned Judge did not take the benefit of seeing the movie. The movie 'Samay Ki Dhara,' was thereafter screened, in a private auditorium for the benefit of the Court. The resolution of the dispute is not so simple as it belonged to the field of performing arts. The sale of filming rights of a novel is qualitatively different from the ordinary sale of goods. It is also different from selling the publishing rights of a publisher. If a novel is sold for filming it or for producing a play, it is transformed into the realm of performing art. The Court can tread on it but with caution. It is better to have assistance of informal assessors from the film world, such as story writer, directors and producers. I made this

suggestion. But one party was not agreeable to have the assistance of the peers.

(5) At the bottom of the controversy is the question of demarcating the Boundaries of the rights of the author and that of a director of the film. Does the assignment of the filming rights mean the end of the author's rights 7 Does it mean that the director has absolute freedom to make any changes in the theme and characters The basic question is how to balance freedom (of expression) of the author with that of the director in the field of art.

(6) In para 12 of the judgment the learned Additional District Judge has held, 'in my view prima facie the plaintiff has not been able to establish or record that the defendants have changed the theme, distorted or mutilated the novel or damaged the underlying idea thereof. It is not shown that the defendants have violated the agreement or section 57 of the Copyright Act. The plaintiff had pima facie authorised the defendants to make necessary changes in order to make a successful film based on the novel. In my view prima facie the film is not at all going to harm the reputation of the plaintiff in any manner.the plaintiff's reputation can be harmed in the eyes of those who have read her novel and seen the film also. Those who have read her novel and seen the film may change their views about the producer, director of the film but not about the plaintiff.'

(7) To my mind the learned Judge has not correctly appreciated the scoops of section 57 of the Copyright Act and the Contract of assignment between the parties. The said section 57 and the contract between the parties reads:

'57.Author's Special Rights : (1) Independently of the author's copyright, and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of : (a) any distortion, mutilation or other modifications of the said work ; or (b) any other action in relation to the said work which would be prejudicial to his honour or reputation. (2) The right conferred upon an author or a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.' Contract between the parties : Kala Vikas Pictures PVT. LTD. Motion Picture Producers Aditya Apartment, Ground Floor, Sunder Bhai Compound. Old Nagardas Road,

Andheri (East) Bombay-400060. To, Smt. Mannu Bhandari, 29/17, Shakti Nagar, Nazia Park, New Delhi. Sub : Acquiring the filming rights of your published 'Hindi Novel' named 'Aap Ka Bunty.' Dear Madam, This is to put on record that you have agreed to sell us the filming rights of your published Hindi Novel, titled 'Aap Ka Bunty' for our film, Production No 1, and for which you would receive a consolidated amount of rupees fifteen thousand and one only, payable to you under the following terms and conditions: (a) That rupees five thousand and one, being paid to you assigning amount Along with the signing of this contract letter between you and us, and that the balance amount of rupees ten thousand shall be payable to you as per the progress of our above said picture in easy Installments, but positively before the completion of the film, (b) That Shri Sirsir Mishra, the Director of the aforesaid film, is writing the screen-play of our production No. 1 and that you have agreed to allow him to make certain modifications in your novel for the film version, in discussion with you to make it suitable for a successful film. (c) That you have agreed that the above-mentioned Hindi film being made basing on your novel, 'Aap Ka Bunty,' will be the sole and exclusive property of M/s. Kala Vikas Pictures Pvt. Ltd. and that we shall have the complete right to utilise and exploit the same in any commercial form such as release in Cinema, Theatres, Radio, T.V., Vedio, Tapes Gramophone records, dubbing and sub-titling etc. In other words we will be the exclusive copy right bolder of your all work done on the novel 'Aap Ka Bunty' in this regard (except its publication rights). (d) That if the above mentioned novel is sold in an other language except Hindi, we will not demand any money. (e) That proper publicity will be given to you as the author of the said story in all credits, (commercial and other publicity). (f) That you have agreed to pay the Income Tax or any other kind of Government taxes which may become payable for the total amount received by you from us. That all other terms shall remain prevalent as in the 'FILM TRADE.' Please sign and confirm the above as taken of your acceptance. Yours faithfully, For Kala Vikas Pictures Pvt. Ltd. sd/- Managing Director I accept and confirm sd/- Mannu Bhandari 21-4-1983.

(8) The hallmark of any culture is excellence of arts and literature. Quality of creative genius of artists and authors determine the maturity and vitality of any culture. Art needs healthy environment and adequate protection. The protection which law offers is thus not the protection of the artist or author alone. Enrichment

of culture is of vital interest to each society. Law protects this social interest. Section 57 of the Copyright Act is on a such example of legal protection. Section 57 lifts authors' status beyond the material gains of copyright and gives it special status.

(9) Section 57 falls in Chapter Xii of the Act concerning civil remedies. Section 55 provides for certain remedies where there is infringement of copyright, Section 56 provides for protection of separate rights comprising the copyright in any work. Than comes Section 37, providing for authors' special rights, and the remedies for violation of these rights. This is a statutory recognition of the intellectual property of the author and special care with which the intellectual property is protected. Under section 57 the author shall have a right to claim the authorship of the work. He has also a right to restrain the infringement or to claim damages for the infringement. These rights are independent of author's copyright and the remedies open to the author under section 55. In other words section 57 confers additional rights on the author of a literary work as compared to the owner of a general copyright. The special protection of the intellectual property is emphasised by the fact that the remedies of a restraint order or damages can be claimed 'even after the assignment either wholly or partially of the said copyright.' Section 57 thus clearly over-rides the terms of the Contract of assignment of the copyright. To put it differently, the contract of assignment would be read subject to the provisions of Section 57 and the terms of contract cannot negate the special rights and remedies guaranteed by section 57. The Contract of Assignment will have to be so construed as to be consistent with section 57. The assignee of a copyright cannot claim any rights or immunities based on the contract which are inconsistent with the provisions of section 57.

(10) What is the substance of the protection of special rights guaranteed by section 57 Sub-Clause (a) of Clause (1) of the section prohibits any distortion or mutilation of the author's work. The words 'other modification' appearing in the sub-clause (a) will have to be read ejusdem generis with the words 'distortion' and 'mutilation.' The modification should not be so serious that the modified form of the work looks quite different work from the original. 'Modification' in the sense of the perversion of the original, may amount to distortion or mutilation. But. there can be

a modification implicate such as where 'A' is changed to 'B,' both being quite distinct. Sub-clause (a) thus provides inviolability to an intellectual work. Sub-clause (b) provides for remedies for protection of honour and reputation of the author. The bundle of rights and remedies provided by section 57 is in true with the modern development in law relating to protection of intellectual property of the author and the international agreements and treaties in that regard. The learned Judge is not right in saying that because the modifications are permissible under the Contract of Assignment of Plaintiff bad failed to prove the breach of section 57.

(11) As stated earlier the correct way of construing the contract of assignment dated 31-4-1983 is to read the provisions of the said contract as complimentary to section 57 and not inconsistent with it. Clause (b) of the Contract states, 'Shri Sirsir Mishra, the Director of the aforesaid film is writing the screenplay of our Production No. 1 and that you have agreed to allow him to make certain modifications in your novel for the film version in discussion with you to make it suitable turn a successful film. Only 'certain modifications' which arc necessary for converting the novel into a film version are allowed. The second object of modifications is to make the film version suitable for a successful film. But the said modifications are to be done after discussion with the author. The contract further states that proper publicity will be given to the Plaintiff as the author of the said story in all credits (commercial and other publicity). Subject to these important caveats. the assignee shall become the exclusive copyright holder of the said novel, to exploit the novel for any reproduction except by way of publication as a novel. Reading the contract with section 57 it is obvious that modifications which are permissible are such modification which do not convert the film into an entirely new version from the original novel. The said 'certain modifications' should also not distort or mutilate the original novel. The novel will include the main theme, the situations and the main characters of the novel. The fact that Mannu Bhandari is the author of the story is to be published in all the credits. This is for giving due recognition to the reputation of the author. The word 'credits' in the parlance of show business means recognition of credit-worthy actions of all those who have participated in making the show business a success. As a show business or as a box office collection, a film may be a success, but, it may do no credit to the reputation or the honour of the author. That in why section 37 insists on the special protection to

honour and reputation of the author. The contract requires that 'proper' publicity should be given. The word 'proper' has to be interpreted in contradistinction to 'notoriety' or 'bad name,' causing harm to the honour and reputation of the author.

(12) Counsel for the respondent has argued that Clause (b) of the Contract permits modifications to be made by the Director. Modifications actually made are made after discussions with the author and she had agreed to the said modifications. Whether the 'modifications' in the film are within the permissible limits or not will be examined later. Let us first examine the objections of the respondents to issuance or injunction.

(13) Counsel for the respondents submits that the restraint order in the nature of injunction under section 57 can be passed when there is only literary reproduction. If the said novel is published with impermissible changes the publisher can be restrained but where the film is produced based on the novel, no restraint order can be passed under section 57. I do not agree. Section 57 is a special provision for the protection of the special rights of the authors. The object of the section is to put the intellectual property on a higher footing than the normal objects of copyright. The language of section 57 is of widest amplitude. It cannot be restricted to literary' expression only. Visual and audio manifestations are directly covered.

(14) The second objection of the respondent is that the author received the balance amount of Rs. 10,000.00 in July 1984, i.e. after she sent the letter of protect to the Director/Producer. This submission is also without substance. The suit is not for claiming damages but for a permanent injunction. If she accepts part of the consideration, the same is to be treated as acceptance under protest and without prejudice to her rights. The wording of section 57, viz. 'even after the assignment' will dispell all doubts on this question. Assignment means passing of the title on payment of consideration.

(15) The counsel for the respondent has then submitted that the Plaintiff has acquiesced in the modifications in as much as the bad filed a suit almost one year after the alleged cause of action mentioned in the Plaint. The learned Trial Judge has refused ad-interim injunction on the ground of delay and laches on the part of

the Plaintiff. The two protest letters were sent by the Plaintiff on 29-9-1984 and 26-1-1985. The suit was filed on 19-8-198S. The learned Judge has held that during this period the defendants had completed the entire film. But, this statement does not appear to be quite correct. In bids letter dated 11-9-1984, written from Bombay, to the author, Director Sirsir Mishra had explained that because of pre-occupations in Bombay he did not communicate with the author. As regards the advertisement of the picture 'Samay Ki Dhara' which was published by that time, the Director had stated, 'The advertisement of Samay Ki Dhara carries the heading that 'shooting is complete,' but this is little of the stunt publicity we are yet to complete the shooting. That I have told that I will have to go to Delhi for 2/3 days the shooting of Samay Ki Dhara but due to the rainy season the programme is not yet fixed...I will phone you before my departure to Delhi.' From the further correspondence between the parties, it is clear that the picture was not complete, as held by the learned Judge. In her letter dated 4-3-1985 written to the Director, she has referred to her talk with the producer who had told her that the shooting was complete and that the dubbing was going on. Sbe had also complied to the Director for not responding to two of her letters. She had reiterated that the last she had heard from the Director was that the shooting was not complete. She had then requested the Director to inform her about the dates of shooting of the last part of the film and that she wished to be preset while the shooting was going on. She had then indicated that she would be able to go to Bombay around 25th of March, 1985. This letter was sent by Registered Ad post. It is produced in this Court. From this correspondence, it is clear that till March 1983 the impression given to her by the Director was that the screening of the picture was not complete. The producer on the other hand had told her that the picture was complete. After March 1985 there is no letter from the Director in response to the said Registered Ad letter. In these circumstances, the Plaintiff cannot be held guilty of any laches nor can it be said that she had acquiesced in the modifications made by the Director.

(16) The learned Additional District Judge has observed, 'In my view prima facie the film is not at all going to barm the reputation of the plaintiff in any manner. The plaintiff's reputation can be harmed in the eyes of those only who has read her novel and seen the film also. These who have read her novel and seen the film

may change their view about the producer, director of the film but not about the Plaintiff. 'The appellant submits that this finding is not correct, According to her she has earned a great reputation in Hindi Literature as an Author. She has written several novels, plays and stories and has acquired a special status in the Indian Literary world for her sensitive treatment of contemporary sociological any psychological things. One of her short stories is screened as a successful film 'Rajni Gandha'. Her plays have achieved success as stage-plays and one of her works 'Maha Bhoj' has been acknowledged as a trend-setter. It was produced by the National School of Drama and other drama groups and has also been broadcasted by the Bbc London. She has been awarded a number of awards for her literary works. She was a member of Sahitya Academy Hindi Advisory. Committee and has also been on the Advisory Board of the Ministry of Information and Broadcasting. She is also a well known film script writer and she has written dialogues for films. One of such films, 'Swami' has won prizes. She has written scripts for some episodes of the T.V. Seriall 'Rajni.' She claims to be the only lady writer from India who had attended the world conference of third world feminine writers held at Frankfurt. According to her, the novel 'Aap Ka Bunty' was published Seriall wise in the weekly magazine 'Dhararnyug' in 1970. It was published in a book form in 1971. Since then the novel has been translated in a dozen of Indian and foreign languages and over 80,000 copies of the Hindi alone have been sold. The novel has been prescribed for graduates and post-graduates courses in different universities. A number of research scholars have submitted their research works for their degrees as a critical study of the novel. The novel 'Aap Ka Bunty' is recognised by the public nationally and internationally for the script, theme, dialogue, substance and the central idea brought about by the wrier and is liked by the public at large. She thus claims special reputation as a trend-setter and a committed writer. She also claims special reputation for the novel Aap Ka Bunty. She submits that her image would be lowered down before the students, the research scholars as also in the literary world and the public at large if distorted version of her novel is allowed to be presented through the film. She is particularly critical of the alleged commercialisation of the novel by the producer.

(17) The fact that the appellant has earned a place and reputation in Hindi Literature is not denied by the respondent. It is widely believed that there are

investments and collections of crores of rupees in a successful Hindi movie and the heroes and heroines are paid fabulous amounts for their services. If the complaint of the author (of mutilation and distortion of the novel) is correct the lay public and her admirers are likely to conclude that she has fallen prey to big money in the film world and has consented to such mutilation and distortions. The apprehension of the author cannot be dismissed as imaginary. It is reasonable. Her admirers are likely to doubt her sincerity and commitment and she is likely to be placed in the category of cheap screenplay writers of the common run Bombay Hindi Films. Apprehension of loss of reputation is thus real one. Once the film is screened for general public, the damage would be caused and no money compensation would restore the reputation. The fact that the author has not claimed the damages in the suit speaks of her approach. She is interested only in not allowing any one to play with her reputation as an author.

(18) I broadly agree with the approach of the learned Additional District Judge that some changes are inevitable when a novel is being converted into a motion picture. Out door shooting, choosing of sites for that purpose with aesthetic considerations, situations for the songs (which are a vital part of the Hindi films) are some of the considerations which required changes. So also, selection of situations from the novel for their affective visual presentation, should be the choice of the Director. However, such changes should not mutilate or distort or completely modify the original theme and characters. The court has, thereforee, to balance the artistic treatment of subject by the author and that by the Director. What are the objections of the author to the visual presentation of the theme and the characters (after seeing the film itself)

(19) The first objection of the author is to the name of the film, 'Samay Ki Dhara'. From the correspondence between the parties it is prima facie clear that she bad agreed to this name in desperation, as the matters were not moving. The title 'Samay Ki Dhara' is so general as to suggest any social problem that face the Indian society today. For making it more specific a direct reference to 'Bunty' is necessary. The producer should, thereforee, so amend the title as to include in the title 'Smay Ki Dhara' and 'Aap Ka Bunty'.

(20) The second objection of the author is to the character of the first husband. In the original story he is shown as a Divisional Manager of some Company. In the film he is depicted as an unscrupulous builder. The story in the film shows that he procures work by supplying women. The character of Prakash has been newly introduced in the film as an Assistant to the first husband. The novel does not give us any particulars about the character of the first husband. According to the author, he is a normal middle-class executive. One cannot find fault with the Director if he partly changes the character in the absence of the specific details in the novel. But, the objection of the author is more serious. She submits that the second wife (who, according to the author, is also a simple middle class housewife) has been depicted as a stereo-typed vamp in Hindi films. Her behavior and the expression borders on vulgarity.

(21) The author submits that the characters and theme is mutilated through vulgar dialogues. The audio-visual presentation has the object of brash sex to attract box-office. I do not agree If the director wanted to do so, there was full scope to do it from the sequence in the novel itself. The novel depicts that in the new house (of the second husband) Bunty is not able to sleep. Ha sees blue light emerging from the bedroom from the half closed door. In curiosity he peeps through the door. He is taken a back by nude figure of the second husband and semi-nude figure of his mother. He is very angry with bids mother. But the bare body of man gives new awareness to Bunty of his manhood. He then dreams of several nude bodies and conjures up his place in them. The novel itself provides this episode. If the Director wished to exploit it to show more explicit sex sequences he had the opportunity to do so. This could not have been objected to by the author because it formed part of the novel itself. But the director has, quite sensibly, deleted the whole episode.

(22) This submission raises an important question of an aspect of courts powers under section 57 of the Act. The Court does not sit as a sentinel of public morals or super-censor in exercise of its powers under the said section. It cannot impose its views (prudish or liberated) on sex or its depiction in the works of art. The concern of the Court is to examine how far the new 'avatar' is true and authentic and that changes are necessary due to constraints of a medium.

(23) I have gone through the script of the film and also seen the visual effect of these characters in the film. I direct that the following sentences should be deleted from the film :

PAGENo. in Original Script Dialogue x x x x 17 X X X X 19 X x X X 49 X X X X 62 X X X X These sentences distort the characters and thus cannot be described as the necessary changes for the change in the medium i.e. from literary to audiovisual,

(24) The next objection of the author is to the end of the film. The end of the novel is that Bunty is admitted in a hostel by his natural father because Bunty is not able to adjust in the new family and particularly with the second wife. He is not ready to accept the second wife as his mother as he is not ready to accept his mother's second husband as his father. However, in the film, this end is changed and it is depicted that Beauty dies after he runs away from the house of his natural father. It is depicted that he dies for want of food and frustration after wandering from place to place for four days. His body is put in the hospital morgue as an unclaimed body. After receiving information from the Police and mother with the new husband and the father with the new wife reach the hospital. There are about 50 unclaimed bodies lying on the table in the morgue with faces covered The mother and the father rush from one end to another, lifting the cover from each face in great agony and finally find Bunty's body. From the correspondence it appears that there was a good deal of dispute between the author and the Director as to what should be proper end. She had at one stage suggested that the film should end by showing Bunty entering a blind apply with a question mark at the end. The author's objection is that by killing Bunty the Director has killed the problem. She submits that the novel is not an snti- divorcee novel as the death of children is not an inevitable consequence of divorce. Prima facie it is difficult to appreciate this submission of the author. Death of a child who has suffered in both the families can not be said to be an impossibility and if the Director selects the end in preference to the suggestion of the author it is difficult to find fault with him. Unlike the traditional commercial films, the director has shown courage in ending the picture with death of the main character.

(25) It is not known how the social problem in the novel would be kept open for the discussion by the viewers if it is shown that the child is put in a hostel or that he goes to an unknown destiny. However, what is objectionable is the manner in which death is presented to the two families. The entire scene in the morgue is too crude, brash and nauseating. The irony of the situation, viz. that although the child has both the parents, the body is required to bs kept in the morgue as an unclaimed body, is pathetic enough to makethe viewer of the film disturbed. Even for the less educated or illiterate people who ree Hindi films, the message will go home even if the film steps at a point where both the families see the dead body of Bunty in the morgue and collect it. I, thereforee, direct that that part of the end of the film which shows a large number of dead bodies spread on the table and the desperation of the families to identify Bunty's body should be deleted from the film.

(26) With the changes directed above, the film can be screened. The order of the learned Additional District Judge is upheld subject to the modifications and deletions suggested above.

(27) This judgment was ready for pronouncement when a joint application for settlement has been moved by the parties before me on August, 7,1986. The story of the filming of the novel 'Aap Ka Bunty' his a happy end like successful commercial films. The joint application states :

'1.That the respondents do hereby give a solemn and unqualified undertaking to the Hon'ble High Court and the appellant . (i) That they regret the changes made in the film and will delete the name of the appellant and her novel 'Aap Ka Bunty' from the credits (title commercial and publicity of the picture 'Samay Ki Dhara' ; and (ii) That in the posters and other publicity of the said picture prepared or used hereafter, they will not refer to or mention the name of the appellant or her novel 'Aap Ka Bunty' in any manner, whatsoever. It is clarified that undertaking does not apply to the publicity material which has already been used in the past by the respondents or the previous publicity on radio etc. 2. That notwithstanding any agreement, understanding, past dealings or anything else whatsoever the respondents accept, concede and acknowledge without any qualification or or reservation that the appellant holds the exclusive copy right in the said novel 'Aap

Ka Bunty' and the story and will be free to use and exploit it in any manner, she desires, without any let or hindrances by the respondents. On her part the appellant does not claim any right or interest in the picture 'Samay Ki Dhara' produced by the respondents and agrees that the respondents would beat liberty to release, screen and exploit the said picture in any manner and in any territory they like. The appellant will have no objection to the same, so far as her name and the name of her novel 'Aap Ka Bunty' is not involved with the picture or its publicity in any manner. 3. That in view of the above settlement, the appellant withdraws the above appeal pending in this Court and the suit No. 160 of 1985 pending in the Court of Shri R.C. Chopra, Additional District Judge, Delhi. It is, thereforee, prayed that the above appeal as well as the suit No. 160 of 1985 be dismissed as withdrawn, leaving the parties to bear their own costs.'

(28) Counsel for the parties have requested me to pronounce the judgment as there is no decision of any Court of law at this stage and particularly on the interpretation of Section 57 of the Copyright Act, 1957.

(29) In view of the settlement between the parties the findings of facts and the directions given in this judgment have become 'Otiose', The respondents would be free to exhibit the movie in accordance with the settlement between the partics.

(30) The appeal as well as the suit are dismissed as withdrawn in terms of the said settlement between the parties. There shall be no order as to costs.

--- *** ---

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com