

Rediff.Com India Ltd. Vs. E-eighteen.Com Ltd.

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SooperKanoon Citation : sooperkanoon.com/979715

Court : Delhi

Decided On : Jul-22-2013

Judge : Vipin Sanghi

Appellant : Rediff.Com India Ltd.

Respondent : E-eighteen.Com Ltd.

Judgement :

\$~40. * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on: Judgment delivered on: % + 01.07.2013 22.07.2013 C.S. (OS) No.1115/2008 REDIFF.COM INDIA LTD. Through: Plaintiff Ms. Sunita Sridharan, Advocate versus E-EIGHTEEN.COM LTD. Through: Defendant Mr. Mrinal Bharti, Advocate CORAM: HONBLE MR. JUSTICE VIPIN SANGHI JUDGMENT VIPIN SANGHI, J.

1. The plaintiff has filed the present suit alleging infringement of the plaintiffs copyright in the following literary and artistic work, of the plaintiff of which the plaintiff has obtained registration from the Registrar of Copyrights:

2. Consequently, the plaintiff has sought the following reliefs in the suit: a) An order for permanent injunction restraining the Defendants, their directors, officers, servants and agents and all others acting for and on their behalf from using or otherwise copying, selling, offering for sale, distributing, issuing to the public, counterfeit/ unlicensed versions of the Plaintiffs virtual analogue representation

titled as HOW HOT IS THIS STOCK having the features of an analogue dial, in any manner, amounting to infringement of the Plaintiffs copyright in the said visual analogue dial; b) An order for permanent injunction restraining the Defendants, their directors, officers servants and agents and all others acting for and on their behalf, from unauthorisedly using or otherwise selling, offering for sale, distributing the Plaintiffs virtual analogue representation titled as HOW HOT IS THIS STOCK having the features of an analogue dial or any deceptive variants thereof has been applied without the license of the Plaintiff, amounting to passing off of the analogue dial of the Plaintiff; c) An order for damages of Rs.20,00,000 to be paid by the Defendants on account of infringement of copyrights, passing off and also for loss of the Plaintiffs sales and reputation. d) An order for rendition of accounts of profits illegally earned by the Defendants by reason of infringement of the Plaintiffs copy rights, including conversion damages which are presently indeterminate, as aforesaid and by passing off as virtual analogue representation titled as HOW HOT IS THIS STOCK having the features of an analogue dial and/or business as the services and business of the Plaintiff, and a decree be passed against the Defendants in the sum of the amount so ascertained.

3. The case of the plaintiff is that it is an online media company carrying on worldwide online business of providing news, communication, entertainment, stock market analysis and shopping services through the internet. The plaintiff was founded in the year 1996. It has its offices in India and in the U.S.A. The plaintiff is an online internet portal offering a wide variety of services to its users and the nature of business activities carried on by the plaintiff is akin to a newspaper or a magazine, wherein the plaintiff publishes, inter alia, current updates and critiques on diverse topics of interest to the worldwide community of internet users.

4. The plaintiffs website www.rediff.com consists of information, communication and content services, free and paid community features and products, including e-commerce and mobile services, and offers a variety of services including coverage of happenings in corporate India, stock market trends and analysis, regular columns and feature stories, as well as personal finance information. It also provides stock market quotes, analyses and market voices, a live running commentary updated every few minutes through its service offering titled as Rediff

Moneywiz. It also provides the facility of personal portfolio tracker to users.

5. The plaintiff states that it has received several prestigious awards on account of its efficient, quick and superior quality of services offered over the years, which have been detailed in para 5 of the plaint. The plaintiff claims that in the year 2006, it developed an analogue image of a Dial. The main purpose behind devising the Dial was to enable the users to reach a quick and snapshot conclusion about the prospects of a stock or a mutual fund. The quest of this analogue image led to the creation of the Dial, having the features of a Dial like graphics, with a description titled: How Hot is this Stock?. The Dial helps the web user to make a judgment about a stock or a mutual fund. The critical parameters that determine the prospects of a stock or a mutual fund were identified by the plaintiff, and these parameters were put into a formula that computes and displays the prospects of a stock or a mutual fund on the Dial. The plaintiff claims that the visual image of the Dial is unique and original to the plaintiff, and it is the first company in India to have developed such a visual representation. The Dial communicates and disseminates numerically complicated data with respect to the capital markets within milliseconds. The plaintiff claims that the Dial is unique to the plaintiff, and that the plaintiff has put in efforts to create and develop the formula and the principle underlying the Dial, so that the same can be incorporated in its different service offerings.

6. The plaintiff further states that it applied for registration of its copyright as a literary cum artistic work on 08.02.2007 which has been granted to the plaintiff by the office of the Registrar of Copyright, New Delhi vide registration not A-82622/58 dated 28.04.2008. The plaintiff claims that the Dial is used on its Rediff Moneywiz service offering since December 2006 i.e. much prior to the defendants deceptive Dial.

7. The plaintiff claims that the defendant company runs the website www.moneycontrol.com a personal finance portal. In the month of May 2008, the plaintiff noticed on the internet that the defendant had been infringing the plaintiffs copyright and passing it off as its own Dial, by displaying a deceptively similar Dial similar to that of the plaintiffs, which was titled as Mutual Fund Meter, to promote

their business through internet on its website moneycontrol.com. The plaintiff claims that by using a deceptively similar Dial to that of the plaintiffs Dial in the same line of business, i.e. imparting information relating to the capital markets, the defendant is infringing the plaintiffs copyright, as aforesaid. The plaintiff claims that it has suffered incalculable damage due to the aforesaid alleged infringement of its copyright detailed hereinabove.

8. The printout of the defendants webpage displaying the Mutual Fund Meter on its website aforesaid, in respect of mutual funds has been placed on record by the plaintiff. I may note that though the defendant denied the said documents during the course of admission/denial of documents, during the course of his submissions, learned counsel for the defendant has made a statement that the said display of Mutual Fund Meter is indeed the display as found on the defendants website. The relevant parts of two instances of the display of the Mutual Fund Meter -contained on the defendants website, are as follows:

9. The plaintiff claims to have suffered incalculable damage to its intellectual property rights and business on account of the aforesaid alleged copyright infringement employed by the defendant in relation to the plaintiffs Dial. The plaintiff claims that the defendant is using the pictorial representation of a Dial with similar colour shades, layout, features, get up etc. as that of the plaintiffs Dial with the title Mutual Fund Meter. The plaintiff claims that it has developed the visual Dial and, in the process, expended huge sums of money. It is claimed that the plaintiffs money and skill has been expended in marketing and promoting the said Dial. The plaintiff claims that it has achieved a large and extensive web base of users and has built up a very large and valued reputation and goodwill for its Dial. It is claimed that the plaintiff has spent huge amounts of money in advertisement and incurred publicity expenditure for popularising their Dial, including the copyright therein, on the internet.

10. It is further claimed that the plaintiffs Dial has come to be associated by the traders and members of the public exclusively with the plaintiff. The Dial is an artistic pictorial representation consisting of the analogue graphical image forming part of a semi circle like representation in red and light blue colours enclosing the

words hot and cold with a needle. The plaintiff claims that the defendants visual tool with Dial like graphics is deceptively and confusingly similar to the plaintiffs Dial and is an attempt to pass off the plaintiffs visual tool with Dial like graphics for commercial gain on their website. The plaintiff claims that the said use by the defendant of the Dial tantamounts to infringement of the plaintiffs copyright, since it is not licensed by the plaintiff to the defendant. The plaintiff claims that by virtue of longstanding use, publicity and popularity attained for the visual Dial, the plaintiff alone is entitled to lawful use of the said Dial to the exclusion of others, unless expressly authorised by the plaintiff. The plaintiff also claims that the defendants had knowledge of the plaintiffs prior use of the Dial and its functions, and the defendant started using the Mutual Fund Meter much later.

11. The case of the plaintiff is that the users and members of the trade are likely to assume that the defendants are related to, or approved by the plaintiff on account of the infringing Dial being used by the defendant. The confusion is exacerbated by the fact that the class of users of both the plaintiffs and defendants web services are the same. The plaintiff further claims that the confusion can also lead to potential decline in the page views and unique features of the plaintiffs website, thereby resulting in loss to the plaintiffs website as a whole.

12. In its written statement, the defence taken by the defendant is that the plaintiff is not the first user of the copyright. The defendant claims that it was granted a license on 09.02.2006 by M/s. Infosoft Global Pvt. Ltd. in respect of which a license fee of US\$ 507.99 was paid on the said date. The defendant claims to be the prior user. It is claimed that the plaintiff is neither the first user of the copyright, nor the plaintiff is entitled to any exclusive right since the plaintiff is not the owner of the copyright in terms of section 17 of the Copyright Act, 1957 (the Act). The defendant, inter alia, states that the Dial like graphical representation in circular/semi circular form titled Mutual Fund Meter is the property of Infosoft Global Pvt. Ltd. The defendant claims that Infosoft Global Pvt. Ltd. is a necessary party to the proceedings.

13. The defendant further states that the colour scheme, layout and appearance of the plaintiffs Dial are distinguishable from that of the defendant and, therefore,

there is no likelihood of confusion. In the alternative, the defendant pleads that there is no originality in the visual image of the Dial. The visual graphical representation of a Dial like image is common property, which has been in use for centuries in different scientific gadgets and in graphical representation of statistical charts in educational institutions all over the world. The alleged virtual analogue representation of a Dial is a mechanically reproduced version of a statistical pie chart containing generic features, having been derived from common material source existing in the public domain, which has been, and is being used, for centuries in different industrial/mechanical/graphical appliances.

14. The defendant, therefore, claims that the plaintiff cannot claim to be the proprietor in respect of the same. The presentation of an idea through a Dial like pictorial representation through which certain single/multiple/common variables are depicted, have been depicted for centuries. The plaintiff, by claiming copyright on the same, is trying to usurp the proprietary right in an idea which has been a common source of inspiration to people from different streams. This cannot be permitted in public interest.

15. The defendant has also denied that the plaintiffs Dial has come to be associated by traders and members of the public with the plaintiff. The defendant states that the plaintiffs Dial is so generic and common in its orientation, get up, or lay out pattern having been derived from common material source existing in the public domain for centuries, that the said Dial is not copyright worthy. The defendant states that there cannot be any copyright insofar as the idea of dissemination of information through representation of a Dial is concerned.

16. The plaintiff has filed its replication practically denying the averments made in the written statement and reiterating its averments contained in the plaint.

17. On the basis of the pleadings, this Court framed the following issues in the suit on 16.07.2010: (i) Whether the defendants dial Mutual Fund Meter infringes the plaintiffs copyright in the dial How Hot Is This Stock? OPP (ii) Whether the plaintiffs dial is deceptively similar to that of the defendant? OPP (iii) Whether the suit is bad in law on account of non-joinder of party? OPD (iv) Whether the plaintiff is entitled to permanent injunction? OPP (v) Whether the plaintiff is entitled to

damages? OPP (vi) Whether the plaintiff is entitled to interest? If so, at what rate and for which period? OPP (vii) Relief(s), if any.

18. The parties have led their respective evidence. The plaintiff has produced two witnesses to prove its case, namely, Mr. Shishir Bhate, Associate Editorial Director, Rediff.com India Ltd. as PW-1 and Mr. Rajesh Karkare, Deputy Managing Director, Design, Joint Creative Head of the plaintiff company as PW-2. The defendant has led the evidence of Mr. Gautam Dubey, the authorised signatory of the defendant as DW-1. The witnesses have exhibited several documents, which would be referred to hereinafter.

19. I have heard submissions made by learned counsels for the parties and their submissions have been focused on the first two issues, for the reason that if the plaintiff were to fail on these two issues, the other issues-namely, issue nos.4, 5 and 6 would also, as a consequence, be decided against the plaintiff. So far as issue no.3 is concerned, no submission has been advanced by the defendant upon whom the onus to prove the same had been placed.

20. PW-1 Mr. Shishir Bhate states that he along with his other team members, namely Zaki Ansari and Rajesh Karkera had designed and developed an artwork, for and on behalf of the plaintiff company. The said artwork was titled as How Hot is this Stock? for the plaintiffs web portal Rediff Moneywiz. The said art work comprised of a Dial with unique and unprecedented quality/feature of demystifying complex and varied information relating to stocks/ shares/ mutual funds with such simplicity that an average investor in one glance gets an exact idea of the strength/ weakness of that particular stock/ mutual fund. He states that he and his team members, as aforesaid, had received due remuneration for the creation of the said artwork for the plaintiff company. He states that vide a deed of assignment dated 19.12.2006 he and his team relinquished their rights with respect to the said artwork in favour of the plaintiff company. The said assignment deed is marked as X-1. He states that the artwork was developed and designed by himself and his team members independently keeping in view the basic requirements of the users of Rediff Moneywiz. He states that it is an original work that was created by himself and his team members by using their skill, judgment

and efforts in the area of their expertise, i.e. business and stock market journalism and graphic design. Though he states that the plaintiff company applied for registration of copyright, the application for registration of copyright has neither been produced in original, nor summoned from the record of the Registrar of Copyrights. Accordingly, copy of the same has been marked as X-2. He states that the plaintiff company has been using the original art work since 19.12.2006. The Original Copyright Certificate granted by the Copyright Registry on 28.04.2010 is exhibited as PW-1/3. He states that in the month of May 2008, he and his other team members noticed that the defendant had copied the plaintiffs artistic work on their website moneycontrol.com and had titled this copied and deceptively similar Dial as Mutual Fund Meter. He states that it is only the defendant companys financial website moneycontrol.com which is using the copied image of the plaintiffs Dial. He states that he and his team members have gone through the ComScore list of top 146 websites and has found that only moneycontrol.com is using the Dial like representation, despite the fact that the plaintiff had copyright in respect of the said artwork. In his cross-examination PW-1, inter alia, clarifies that he had not designed the artwork. However, the same had been developed by him, while Mr. Rajesh Karkera had prepared the final design. He states that he and Mr. Zaki Ansari had assisted in the development of the design. He states that the main parameters to assess the stock as displayed on the website of the plaintiff company are: (i) The current stock price of the shares of a particular company; (ii) The annual revenue of a given company; (iii) The annual profit of the given company; (iv) How many mutual funds hold the given companies stocks, and; (v) The volume of the shares of the given company which are sold and purchased on a given day.

21. He states that from the Dial one would roughly be able to make out whether a particular stock is a good buy or strong buy or sell, or not. The Dial is a visual representation of how badly or how well a particular stock is doing in the market. He admits that the visual representation by way of a Dial is quite common to various fields like scientific gadgets, charts, mechanical appliances and graphic representations. He voluntarily stated that in the field of financial investments no other such like visual representation existed originally, i.e. by way of a Dial, which was being done only by the plaintiff company.

22. Mr. Rajesh Karkera, PW-2 has deposed in his affidavit by way of evidence towards examination-in-chief on the same lines as PW-1. In his cross-examination PW-2 stated that the contribution of Mr. Zaki Ansari and Mr. Shishir Bhate in designing the Dial was only the technical inputs received by him. The entire artwork and design was developed by him. He also stated that he did not receive any remuneration apart from his salary-to create the design was his job. To the question In your knowledge has a Dial ever been used to compare properties of a product or service in relation to any activity?, PW-2 answered, Dials have been in existence since time immemorial. A Dial has never been used in a financial website and that is why the Dial which has been created by me simplifies the purchase of a stock.

23. Mr. Gautam Dubey, DW-1 in his affidavit by way of examination-in- chief disputes the plaintiffs claim of being the first user of the fusion charts/ analogue Dial for providing stock market quotes, analyses and market voices. He states that the defendant company was granted a license on 09.02.2006 by M/s Infosoft Global Private Ltd. for use of the analogue Dial for providing stock market quotes, analyses and market voices, for which a license fee of US\$ 507.99 was paid by the defendant on 09.02.2006. A copy of the receipt issued by M/s Infosoft Global Private Ltd. is exhibited as DW1/1. He states that M/s Infosoft Global Private Ltd. has issued letters/ certificates dated 18.07.2008 to the defendant confirming the license granted for the use of fusion charts, and also confirming that M/s Infosoft Global Private Ltd. is the owner and developer of the fusion charts. He states that on a comparison of the Mutual Fund Meter used by the defendant with the Analogue Dial used by the plaintiff, it is seen that the colour scheme, layout and appearance are distinguishable. He states that the subject matter of the said graphs is specialised, and caters to highly discerning and well-educated strata of the society. He states that there is no originality in the visual image of the Dial, claimed to be the copyright protected work of the plaintiff, as it is a common statistical pie chart and resembles a measurement meter used across various industries and contains various generic features that are common to the trade. In his cross-examination, the witness denies that there are similarities between the plaintiffs Dial and the defendants Meter.

24. The submission of learned counsel for the plaintiff is that the plaintiffs copyright in the literary-cum-artistic artwork aforesaid, grants exclusive rights to the plaintiff as enumerated in Section 14 of the Act. Both-in relation to literary and artistic works, clauses (a) and (c) of Section 14, grant the exclusive right to make any adaptation of the work in the owner of the copyright. By reference to the definition of the expression adaptation contained in Section 2(a) of the Act, it is claimed that the right to make adaptation only means any use of such work involving its rearrangement or alteration.

25. Learned counsel for the plaintiff has vehemently argued that it was the plaintiff who, for the first time, used a Dial to convey to its users its recommendations in respect of stocks and mutual funds on Rediff Moneywiz. The plaintiffs recommendations in relation to the stock and mutual funds for buying and selling thereof comprised of several parameters, as aforesaid. Learned counsel submits that the defendant has copied the said idea as, before the use of the Dial by the plaintiff, neither the defendant nor any other website providing similar services have used the image of a Dial to project the recommendations of the experts whether, or not, to buy/sell a particular stock or mutual fund.

26. Learned counsel for the plaintiff has sought to place reliance upon the decision of the Supreme Court in Eastern Book Company and Others Vs. D.B. Modak and Another, 2008 (1) SCC 1 and, in particular on paragraph 14 thereof, wherein the Court observed:

14. The copyright protection finds its justification in fair play. When a person produces something with his skill and labour, it normally belongs to him and the other person would not be permitted to make a profit out of the skill and labour of the original author and it is for this reason the Copyright Act, 1957 gives to the authors certain exclusive rights in relation to the certain work referred in the Act. The object of the Act is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others.

27. Learned counsel submits that since the plaintiff is the owner of the copyright in its Dial, to create which the plaintiff incurred substantial expense of labour, skill and money. The plaintiff is entitled to protection of his rights in the said work, and

the defendant cannot exploit the same by resort to some slight modification of the basic design of the Dial. Learned counsel submits that the word original does not mean that the work must be the expression of original or innovative thought. Merely because a Dial may have been used in the past for scientific purposes and in mechanical devices, the literary-cum-artwork of the plaintiff does not cease to be original. He submits that the Act is not concerned with the originality of ideas, but with the expression of thought. The originality which is required refers to the expression of thought. The Act does not require that the expression must be in original or novel form but that the work must not be copied from another work that it should originate from the author. In this regard reference is made to paragraph 32 of the said decision, wherein the Court, *inter alia*, observed:

32. The word original does not mean that the work must be the expression of original or inventive thought. The Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and in the case of literary work, with the expression of thought in print or writing. The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work that it should originate from the author; and as regards compilation, originality is a matter of degree depending on the amount of skill, judgment or labour that has been involved in making the compilation. The words literary work cover work which is expressed in print or writing irrespective of the question whether the quality or style is high. The commonplace matter put together or arranged without the exercise of more than negligible work, labour and skill in making the selection will not be entitled to copyright. The word original does not demand original or inventive thought, but only that the work should not be copied but should originate from the author. In deciding, therefore, whether a work in the nature of a compilation is original, it is wrong to consider individual parts of it apart from the whole. For many compilations have nothing original in their parts, yet the sum total of the compilation may be original. In such cases the courts have looked to see whether the compilation of the unoriginal material called for work or skill or expense. If it did, it is entitled to be considered original and to be protected against those who wish to steal the fruits of the work or skill or expense by copying it without taking the trouble to compile it themselves. In each case, it is a question

of degree whether the labour or skill or ingenuity or expense involved in the compilation is sufficient to warrant a claim to originality in a compilation.

28. Learned counsel submits that the Supreme Court referred to the decision of the Madras High Court in V. Govindan Vs. E.M. Gopalakrishna Kone, AIR 195.Mad 391, which in turn, referred to Copinger and James on Law of Copyright. The extract from the said treatise is what is relied upon by learned counsel for the plaintiff. Para 40 of the judgment in Eastern Book Company (supra), insofar as it is relevant, reads as follows:

40. The High Court referred (at AIR p. 393, para

10) to Copinger and James on Law of Copyright wherein the law has been neatly summarised that: In the case of compilations such as dictionaries, gazetteers, grammars, maps, arithmetics, almanacs, encyclopaedias and guidebooks, new publications dealing with similar subject-matter must of necessity resemble existing publications, and the defence of common source is frequently made where the new publication is alleged to constitute an infringement of an earlier one. The Court held that in law books and in books as mentioned above there is very little amount of originality but the same is protected by law and no man is entitled to steal or appropriate for himself the result of another's brain, skill or labour even in such works (AIR p. 393, para 10). The Court further clarified that where there is a common source, the person relying on it must prove that he actually went to the common source from where he borrowed, employing his own skill, labour and brains and that he did not merely copy.

29. On the other hand, the submission of learned counsel for the defendant is that mere grant of registration of copyright to the plaintiff vide Exhibit PW-1/3 does not raise any presumption in favour of the plaintiff with regard to the validity of the claim for copyright, or with regard to its alleged infringement. Reference is made to Section 48 of the Act, and the same is compared to Section 31 of the Trademarks Act, 1999. It is argued that the Registrar of Copyrights is only prima facie evidence of the particulars entered therein, and documents purporting to be copies of any entries therein, or extract therefrom-certified by the Registrar of Copyrights, are admissible in evidence in all Courts without further proof or production of the

original. Therefore, the said certificate only saves the plaintiff from taking the trouble of summoning the literary-cum-artwork tendered by the plaintiff with the Registrar of Copyrights while making its claim for copyrights protection therein. Learned counsel submits that the Registrar of Copyrights is not concerned with the validity of the claim for copyright and, obviously, is not concerned with the claim of infringement of copyright which may, allegedly, take place subsequently.

30. In contrast, Section 31 of the Trade Marks Act, 1999, inter alia, states that in all legal proceedings relating to a trade mark registered under this Act, including applications under Section 57, the original registration of the trade mark and of all subsequent assignments and transmissions of the trade mark shall be prima facie evidence of the validity thereof. Learned counsel submits that the grant of registration of a trademark is preceded by an extensive and exhaustive search, advertisement, invitation of objections and opposition and decision on the opposition to the trade mark, if any. The said scheme is not adopted in the case of registration of a copyright and, therefore, registration of a copyright does not vest any presumption of validity of a claim for copyright in the work which has been got registered under the Act.

31. Learned counsel for the defendant further submits that both the witnesses of the plaintiff PW-1 & PW-2 admitted during their crossexamination that visual representation by way of a Dial is quite common to various fields like scientific gadgets, charts, mechanical appliances and graphic representations and Dials have been in existence since time immemorial. A Dial has never been used in a financial website and that is why the Dial which has been created by me simplifies the purchase of a stock. Learned counsel submits that a Dial has been in public domain from times immemorial. It has been used in electrical, electronics and mechanical gadgets to display the output of a particular parameter such as voltage, current, speed, pressure, temperature, weight and time. Learned counsel submits that there can be no claim of a proprietary right in an idea, i.e. the idea to use a Dial, as Dials have been used in various fields. The plaintiff cannot claim that its idea to use a Dial for purposes of reflecting the advice of experts founded upon certain parameters, whether or not to buy or sell a stock or mutual fund, can be protected under the Act as, what is protected under the Act, is not the idea but

the manifestation/ projection thereof.

32. Learned counsel for the defendant has relied upon the following observations of the Supreme Court in *Eastern Book Company* (supra):

57. The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his own skill, labour and investment of capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, coordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. On the face of the provisions of the Copyright Act, 1957, we think that the principle laid down by the Canadian Court would be applicable in copyright of the judgments of the Apex Court. We make it clear that the decision of ours would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Act there is no copyright in the original text of the judgments. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author.

58. On this touchstone, we shall take into consideration the inputs put by the appellants in their journal SCC. The appellants have added in the copy-edited version the crosscitations to the citation(s) already given in the original text; added names of cases and cross-citations where only the citation of the case is given; added citation and cross-citations where only name of the case is given; inserted citation in case history where only the title and year of the impugned/earlier order is given; presented in their own style the cases when they are cited/repeated in the judgment; provided precise references to the quoted matter in the judgment by giving exact page and paragraph number as in the original case

source/treatise/reference material; added margin headings to quoted extracts from statutes/rules, etc., when they are missing from the original text of the judgment; added the number of the section/rule/article/paragraph to the extract quoted in the original text; added the names of Judges on whose behalf opinion given by giving expressions such as for himself and Pathak, C.J., etc.; done verification of first word of the quoted extract and supplied emphasis on such verification; added ellipsis to indicate breaks in quoted extract; provided and supplied the matter inadvertently missed in quoted extracts in the original text of the judgment; completed/corrected the incomplete/incorrect case names or citations; renumbered correctly the clauses/sub-clauses in terms of the questions framed which were numbered in terms of answers to questions framed by learned Judge; changed the text as per corrigenda issued, which has been issued upon SCC Editor's request and suggestions; done compressing/simplification of information relating to the case history; followed certain norms at SCC for giving case names; omitted the words like Section, Sec., Rule, etc. and given only the number of the section/rule at the beginning of the quoted extract; made margin heading and the first clause/sub-section or initial matter of section/rule, etc. to run-on instead of being let to start from a fresh line; done compressing of unquoted referends and use of *** for parts; replaced the series of dots in the raw text with ellipsis; removed abbreviations such as sec., R., cl. and substituted them with full word i.e. section, rule, clause; added hyphenation after the section/rule numbers which have alphabets suffixed to them; applied indentation of quoted extracts; removed full stops or word No.; and given full forms of abbreviations to enhance readability and clarity. In addition to the above, capitalisation and italicisation is also made wherever necessary in the raw text; and punctuation, articles, spellings and compound words are also checked and corrected, if required, in the original text.

59. The aforesaid inputs put by the appellants in the judgments would have had a copyright had we accepted the principle that anyone who by his or her own skill and labour creates an original work of whatever character, shall enjoy an exclusive right to copy that work and no one else would be permitted to reap the crop what the copyright owner had sown. No doubt the appellants have collected the material and improved the readability of the judgment by putting inputs in the original text of the judgment by considerable labour and arranged it in their own style, but that

does not give the flavour of minimum requirement of creativity. The exercise of the skill and judgment required to produce the work is trivial and is on account of the labour and the capital invested and could be characterised as purely a work which has been brought about by putting some amount of labour by the appellants.

60. Although for establishing a copyright, the creativity standard applies is not that something must be novel or nonobvious, but some amount of creativity in the work to claim a copyright is required. It does require a minimal degree of creativity. Arrangement of the facts or data or the case law is already included in the judgment of the Court. Therefore, creativity of SCC would only be addition of certain facts or material already published, case law published in another law report and its own arrangement and presentation of the judgment of the Court in its own style to make it more userfriendly. The selection and arrangement can be viewed as typical and at best result of the labour, skill and investment of capital lacking even minimal creativity. It does not as a whole display sufficient originality so as to amount to an original work of the author. To support copyright, there must be some substantive variation and not merely a trivial variation, not the variation of the type where limited ways/unique of expression are available and an author selects one of them which can be said to be a garden variety. Novelty or invention or innovative idea is not the requirement for protection of copyright but it does require minimal degree of creativity. In our view, the aforesaid inputs put by the appellants in the copy-edited judgments do not touch the standard of creativity required for the copyright.

33. Learned counsel for the defendant has also argued that since the Dial is a common device, there is minimal creativity involved in the creation of the plaintiffs Dial. He submits that lack of minimal creativity, in any event, cannot be protected under the Act, as it lacks originality. Learned counsel for the defendant submits that, in any event, the defendants Dial in its Mutual Fund Meter is starkly different from that of the plaintiff. He submits that in the defendants projection, the Dial is not as simple as that of the plaintiff. It uses many more colour shades which are also defined to mean avoid, strong sell, sell, average buy, buy and strong buy. The defendants Dial is used with the heading Mutual Fund Meter and the defendants work does not contain words such as hot or cold. The shape of the needle is also

distinct, and below the meter it is indicated that the said meter contains a ranking by Crisil. Learned counsel for the defendant points out that it is not even the plaintiffs case that the defendant is using the same software as that used by the plaintiff for generating the results as displayed in its Mutual Fund Meter.

34. Learned counsel also places reliance upon the judgment of the Supreme Court in R.G. Anand Vs. Delux Films & Others, PTC (Suppl) (1) 802 (SC), and in particular on paragraph 46 thereof, wherein the Supreme Court culled out several legal propositions after examining a host of case laws. The said paragraph reads as follows:

46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

35. Learned counsel for the defendant submits that the plaintiff has lead absolutely no evidence to establish violation of its copyright by leading any independent evidence of any actual confusion in the mind of any user or customer. He further submits that no evidence to support the plea of passing of has been led by the plaintiff.

36. Section 13 of the Copyright Act enlists the classes of works in which copyright subsists. These are: a) Original literary, dramatic, musical and artistic works; b) Cinematograph films, and; c) Sound recording.

37. The expression artistic work is defined in section 2(c) to mean: (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; (ii) (iii) 38. a

work of architecture; and any other work of artistic craftsmanship; (emphasis supplied) The expression literary work is defined in section 2(o) to include computer programmes, tables and compilations including computer data bases. Therefore, for copyright to subsist in literary, dramatic, musical and artistic works, the same has to be original.

39. Section 14 of the Copyright Act states that copyright is an exclusive right, subject to the provisions of the Act, to do or authorise the doing of the acts enumerated in the said section, in respect of a work or any substantial part thereof.

40. In respect of a literary, dramatic or musical work, which is not a computer programme, the content of copyright is the exclusive right, subject to the provisions of the Act, to do or authorise the doing of the following acts: (i) to reproduce the work in any material form including the storing of it in any medium by electronic means; (ii) to issue copies of the work to the public not being copies already in circulation; (iii) to perform the work in public, or communicate it to the public; (iv) to make any cinematograph film or sound recording in respect of the work; (v) to make any translation of the work; (vi) to make any adaptation of the work; (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi); (emphasis supplied)

41. In respect of an artistic work, the content of copyright means the exclusive right to do any of the following acts: (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work; (ii) to communicate the work to the public; (iii) to issue copies of the work to the public not being copies already in circulation; (iv) to include the work in any cinematograph film; (v) to make any adaptation of the work; (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv); 42. Pertinently, the case of the plaintiff-in relation to its literary cum artistic work, as aforesaid, is that the defendant has made an adaptation of the said work. The plaintiff has not urged that the defendant has done, or authorized the doing of any of the other acts-enlisted above, in respect of the plaintiffs work.

43. Section 16 of the Act states that no person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other for the time being in force. Copyright is a statutory right and its claim and content must fall squarely within the four corners of the Act. There can be no copyright claimed beyond the purview of the Act.

44. Section 51 of the Act states that copyright of the work shall be deemed to infringe, inter alia, when any person, without a license granted by the owner of the copyright or the Registrar of Copyrights under the Act or in contravention of the conditions of license so granted or of any condition imposed by a competent authority under the Act (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or (ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or (b) when any person (i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or (iii) by way of trade exhibits in public, or (iv) imports into India, any infringing copies of the work. (emphasis supplied)

45. From the evidence led by the two witnesses of the plaintiff, namely, PW-1 Mr. Shishir Bhate and PW-2 Mr. Rajesh Karkare, it appears that the plaintiff may be the owner of the copyright in the literary cum artistic work set out in para-1 herein above, namely, the caption How Hot is this Stock? along with the graphic description of the semi circular Dial with a needle and the words Cold and Hot written on the two ends of the semi circle, and the colour combination of Red to Blue colours moving from Cold to Hot.

46. The witnesses have admitted that the work in question was created in the course of employment of the author. The first owner of the copyright is the author of the work. However, in the case of literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for

the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work insofar as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published. The web pages on the plaintiffs website are akin to an electronic magazine. But, does that mean that the plaintiff can claim the exclusive right to use of a Dial, to the exclusion of any other person, for the purpose of displaying its assessment/recommendation of a stock/mutual fund with regard to its strength/weakness for sale/purchase? 47. The Act is not concerned with the original idea, but with the expression of thought. Copyright has nothing to do with originality of the idea, or literary merit. Copyright subsists in work which is created by the author by his own skill, labour and investment of capital. It could be a derivative work, which has a flavour of creativity. The plaintiff cannot claim, and does not claim to have developed the Dial for the first time. As admitted by the plaintiffs witnesses, a Dial has been used as an instrument to display various qualities and parameters. These, for example are speed, electric current, voltage, weight, heat, height, depth, pressure. Anything that is variable over a duration, or a span, could be displayed by using a Dial. The plaintiff cannot, therefore, claim any exclusive right to use a Dial to represent the strength of its assessment/recommendation made by it for purchase/sale of a stock or mutual fund.

48. Assuming that the plaintiff may be the first to use the Dial to make such a representation, it does not mean that no other person can use the Dial created by him-and not the Dial created by the plaintiff, to convey its own recommendation in relation to a stock or mutual fund. What the plaintiff is seeking, in fact, is copyright over the idea of using a Dial to display the strength of its recommendation for purchase/sale of a stock/mutual fund. As aforesaid, there is no copyright created or protected by law in such an idea, even if it is accepted that it is the original idea of the plaintiff to use the medium of a Dial to project its recommendation for purchase/sale of stock and mutual fund. As held in *Eastern Book Company* (supra), the copyright work which comes into being should be original in the sense that by virtue of selection, coordination and arrangement of pre-existing data contained in the work, a work, somewhat different in character is reproduced by

the author. It is not the originality of the idea which is protected under the Act, but the expression of the thought.

49. Even though, Dial has been used for centuries, the copyright in the Dial drawn created by the plaintiff-with its peculiar use of colours and notations of Cold and Hot and with the literary work How Hot is this Stock? is the plaintiffs original work, despite the fact that the Dial has been used for centuries to display variations of properties already mentioned above, and enumerable other properties. The words Cold and Hot are words of English language and commonly used, and the colours used by the plaintiff in its Dial are available in nature and commonly used. It is the combination of all the aforesaid aspects which is original to the plaintiff inasmuch, as, the plaintiff has created the same, which enjoys protection under the Act. Similarly, the work of the defendant is also its own original work with the words Mutual Fund Meter and the representation of a semi circular Dial with needle; the use of different colours in different sectors of the semi-circle, and; the use of the words avoid, strong sell, sell, average buy, buy and strong buy, to represent the strength of its recommendation for sale/purchase of the mutual fund.

50. Pertinently, the plaintiff does not claim that it has proprietary in the underlying software utilised by it-for arriving at its recommendation in respect of a stock/mutual fund, or that the said software has been used and exploited by the defendant to arrive at its own recommendation with regard to sale/purchase of mutual fund. It is only the projection of the recommendation by means of a Dial which is objected to by the plaintiff.

51. The judgment relied upon by the defendant in Eastern Book Company (supra) and R.G. Anand (supra) leave no manner of doubt that the claim of exclusive right to use the Dial, to represent the strength of the recommendation for sale/purchase of stock and mutual fund is wholly misplaced. As observed in R.G. Anand (supra), where the same idea has been developed in a different manner, it is manifest that the source being common, similarities are bound to occur. Therefore, if the plaintiff and defendant are both using the mechanism of a Dial for the same purpose i.e. to convey their respective recommendation for sale/purchase of stock and mutual fund, they are bound to be similar, as the Dial is common to both. In such cases,

the Courts are required to determine whether, or not, the similarities are in the fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendants work is nothing but a literal imitation of the copyrighted work with some variations here and there, it would amount to violation of the copyright. The Supreme Court held in R.G. Anand (supra) that one of the surest and the safest test to determine whether, or not, there has been a violation of a copyright is to see if the reader, spectator or the viewer after having read or seen both the works, is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original. Where the theme is the same, but is presented and treated differently, so that the subsequent work becomes a completely new work, no question of violation of copyright arises. Where, however, apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negative the intention to copy the original and the similarities in the two works are clearly incidental, no infringement comes into existence. The Supreme Court further held that as violation of copyright amounts to an act of piracy, it must be proved with clear and cogent evidence after applying the various tests laid down by the Supreme Court.

52. Pertinently, in the present case, the plaintiff has led no independent evidence of any independent reader, spectator or viewer, who after having seen both the works, formed an opinion or got an unmistakable impression that the work of the defendant appears to be a copy of the plaintiff work. The Court compared the two works, and finds that there are hardly any similarities in them. Apart from the fact that both the plaintiff and defendant are using a Dial which the defendant is entitled to use, there is no other similarity. The tag-line of the plaintiff How Hot is this Stock? is not used by the defendant at all. The defendant does not even use the expression Hot and Cold to describe the recommendation for buy or sell respectively. The defendant uses the words Mutual Fund Meter which, by no stretch of imagination, can be said to be similar to the tag-line of the plaintiff. The graphic display of the Dial of the parties is also quite dissimilar. The proportion of the diameter with the thickness of the semi circular Dial of the plaintiff, with that of the defendant is not the same. The shape of the needle itself is very distinct. Whereas the needle in the plaintiffs work touches the inner circle of the Dial, the needle in the defendants work pierces the smaller semi circle and ends at about

half of the width of the Dial itself. Whereas the plaintiffs work primarily uses two colours i.e. Blue and Red, the Dial drawn by the defendant is multi-coloured ranging from Red to Green. Pertinently, the colour Blue is not even used by the defendant. The Dial of the defendant is broken up into five sectors with five different colours, unlike the Dial used by the plaintiff which is not shown to be broken up with distinct sectors. Whereas the plaintiff uses only two words Hot and Cold, the defendant has detailed calibration of avoid, strong sell, sell, average buy, buy and strong buy.

53. The plaintiff displays with the Dial, parameters such as price, volume, mutual fund holdings, sales, net profit and also states that the price and volume are computed on last fifteen days trading figures. The defendant does not mention any of these parameters. The parameters mentioned by the defendant are entirely different. The defendant gives the CRISIL CPR rank of the mutual fund concerned, one year return, performance view, investment type and CRISIL CPR category, and states that the ranking is done by CRISIL. C.S. (OS) No.1115/2008 dissimilarities between the works of the plaintiff and the defendant, than the singular similarity i.e. the use of the mechanism of a Dial to project the recommendation in respect of a stock/mutual fund for purpose of recommending buy/sale of the same. A comparison of the works of the plaintiff with that of the defendant, on the whole, does not lead to the inference or perception that the two works are similar.

54. As pointed out by learned counsel for the defendant, the emphasis laid by the plaintiff on the fact that its copyright is registered is misplaced. The registration of a copyright, unlike that of a trademark, is only prima facie evidence of the particulars entered therein. The said registration only serves the purpose of lending authenticity to the certified copies issued by the Registrar of Copyrights, of the entries made in the register. Such certified copies are admissible in evidence in all courts, without further proof or production of the original. The registration of the copyright does not save the registrant from a charge of infringement of copyright of another, and does not lend any presumption of validity to the copyright of the registrant, much less the registration can be used to attack the work of another-as being an infringement of the copyright of the work which is registered.

55. The submission of the plaintiff that the dial adopted by the defendant is an, adaptation of the plaintiffs work, also has no merit. Adaptation is defined in Section 2(a) to mean - in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise; in relation to literary or dramatic work, the same means, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical report. It also means - in relation to any work, any use of such work involving its re-arrangement or alteration. The copyright of the plaintiff in respect of its work aforesaid, is in its literary work, How hot is the stock? and the artistic work i.e. the graphic representation of the Dial. The plaintiff has not claimed, and cannot claim, that its literary work or artistic work has been converted into a dramatic work. It cannot be claimed by the plaintiff that its literary work has been abridged by the defendant. The defendants work cannot be labeled as use of the plaintiffs work involving its re-arrangement or alteration. plaintiffs work is not at all used by the defendant. The For it to be an adaptation, falling in Section 2(a)(v) of the Act, the work - of which it is claimed that an adaptation has been made, should itself be used with rearrangement or alteration. That is not the case in hand. Therefore, reliance placed by the plaintiff on Section 14(a)(vi) or Section 14(c)(v) of the Act is misplaced.

56. In view of the aforesaid discussion, I am of the view that the plaintiff has failed to prove that the defendants Dial Mutual Fund Meter infringes the plaintiffs copyright in its Dial with the tagline How Hot is this Stock?. The plaintiff has also failed to prove that the defendants Dial is deceptively similar to that of the plaintiff. Issue nos.1 and 2 are decided accordingly. Consequently, the plaintiff is neither entitled to the injunction sought by it, nor entitled to claim damages from the defendant. The question of any interest being awarded to the plaintiff, therefore, does not arise.

57. Accordingly, the suit of the plaintiff is dismissed with costs quantified at Rs.50,000/-. VIPIN SANGHI, J JULY 2 , 2013 sr/sl