

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM

THE HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.No.63 of 2018
and CMP.Nos.3492 & 3493 of 2018

M/s.Lyca Productions,
rep. by its Producer Mr.Subash Karan,
No.55, Block – B, 4th Floor,
Vijayaraghava Road,
T.Nagar (Near Vani Mahal)
Chennai – 600 017.

.. Appellant

VS

1.J.Manimaran,
Proprietor of M/s.J.S.Screens,
Having office at Nok.12, Angalaparameswari
4th street, M.G.R. Nagar,
Chennai – 600 078.

2.M/s.Tamil Film Producer Council,
rep. by its Secretary,
No.14/26, Yogambal Street,
T.Nagar, Chennai – 600 017.

3. **M/s.Film & Television Producers Guild of South India,**
rep. by its Secretary,
No.19, Jagadeeswaran Street,
T.Nagar, Chennai – 600 017.

4.Censor Board of Film Certification,
Shastri Bhavan,
No.35, Haddows Road,
Chennai – 600 006.

5.M/s.UFO Digital Cinema,
No.53, Arunachalam Street,
Police Quarters, Triplicane,
Chennai – 600 004.

6.M/s.PXD,
Prasad Extreme Digital Cinema Network Private Limited,
No.28, Arunachalam Road,
Saligramam,
Chennai – 600 093.

7.M/s.QUBE,
No.42, Dr.Ranga Road,
Mylapore,
Chennai – 600 004.

.. Respondents

Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 19.2.2018 passed in O.A.No.72 of 2018 in C.S.No.65 of 2018 on the file of this Court.

For Appellants .. Mr.PL.Narayanan

For Respondents .. Mr.V.Raghavachari
for M/s.R.Veeramani & V.Easwaran
for 1st respondent

Mr.K.Saravanan
for 3rd respondent

JUDGMENT

(Delivered by Ms.Indira Banerjee, Chief Justice)

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This appeal is against a judgment and order dated 19.2.2018 passed by the learned Single Bench allowing the application being O.A.No.72 of 2018, of the plaintiff, impleaded as respondent No.1 in

this appeal, for interlocutory injunction in the suit being C.S.No.65 of 2018.

2. The plaintiff/respondent No.1 claims to be the sole proprietor of M/s.J.S.Screens, engaged in production of Tamil feature films. According to the plaintiff/respondent No.1, the plaintiff/respondent No.1 has enrolled as a member of the respondent No.3, Film and Television Producers Guild of South India, a registered society impleaded as the third defendant in the suit. The Registration Number of the plaintiff/respondent No.1 is 9880.

3. The plaintiff/respondent No.1, claims to have applied for registration of his film titled "KARU" with the respondent/defendant No.3 on or about 3.9.2011. It has been stated that the application for registration was approved with effect from 28.9.2011 and the plaintiff/respondent No.1 was given Guild Registration No.16530. The plaintiff/respondent No.1 has pleaded that, at the material time there was no other film with the title "KARU" registered with the second or the third defendant/respondent.

4. In the plaint, it is pleaded that the third defendant/respondent is the oldest organisation of its kind and its members comprise, inter alia, film producers spread across South India. The third defendant/respondent safeguards the interest of its members and acts strictly in terms of its bye-laws. As a member of the third defendant/respondent, the plaintiff/respondent No.1 claims entitlement to all protection and privileges as available to the members of the third respondent/defendant. The appellant/defendant No.1, however, is not a member of the third respondent/defendant.

5. The second defendant/respondent, M/s.Tamil Film Producer Council, is also a society similar to the third respondent/defendant, comprising, inter alia, of film producers. The appellant/defendant No.1 is a member of the second respondent/defendant.

6. According to the plaintiff/respondent No.1, the second and the third defendants/respondents coordinate with each other to ensure that there is no duplication of registration of film titles. The registered title holders alone are entitled to use the titles registered with the second and third defendants/respondents to the exclusion of

other members. The titles so registered by members cannot be used by others, even as prefix or suffix with other words.

7. In paragraph (5) of the plaint, it is pleaded that after registration of the film title "KARU" with the third defendant/respondent, the plaintiff/respondent No.1 started production of a film titled "KARU". The plaintiff/respondent No.1 claims to have made huge investments for his aforesaid film monetarily as also by way of labour, publicity, etc. It is, however, not in dispute that the film has not yet been completed and the same is not ready for release.

8. The plaintiff/respondent No.1 has stated that the plaintiff/respondent No.1 was shocked and surprised to come across hoardings and advertisements in dailies, including "Daily Thanthi" of a film produced by the appellant/first defendant under the same title "KARU", which is directed by one Vijay.

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9. In the plaint, it is pleaded that the appellant/first defendant is reported to have registered its film title "KARU" with the second defendant/respondent in 2017, six years after the

plaintiff/respondent No.1 registered the said title with the third defendant/respondent.

10. The plaintiff/respondent No.1 contends that adoption by the appellant/first defendant of the title "KARU" is unfair in view of the earlier registration by the plaintiff/respondent No.1 in 2011, of the film titled "KARU"with the third defendant/respondent.

11. According to the plaintiff/respondent No.1, he adopted the tile "KARU" for his film in tune with the theme of the film. The title is most apt and appropriate having regard to the story of the film. The title was, according the plaintiff/respondent No.1, chosen after long deliberation. The plaintiff/respondent No.1 has, in the plaint, claimed that 90% of the production has been completed and the remaining part is likely to be completed within a short time.

12. The plaintiff/respondent No.1 has alleged that after advertisement of the film of the appellant/first defendant and the release of hoardings and official teasers in internet websites, friends, well-wishers, co-producers and financiers of the plaintiff/respondent No.1 have started making queries from the plaintiff/respondent No.1

as to whether the plaintiff/respondent No.1 has sold the film "KARU" to the appellant/first defendant, thereby causing untold embarrassment and loss of name and reputation to the plaintiff/respondent No.1. By a letter dated 6.5.2017, addressed to the third defendant/respondent, the plaintiff/respondent No.1 requested the third defendant/respondent to take steps to protect the interest of the plaintiff/respondent No.1. The third defendant/respondent, in its turn, addressed a letter dated 26.5.2017 to the second defendant/respondent, of which the appellant/first defendant is a member.

13. The plaintiff/respondent No.1 has claimed that release of the film "KARU" by the appellant/first defendant will put the plaintiff/respondent No.1 to loss and prejudice, which cannot be compensated in terms of money. The name and reputation of the plaintiff/respondent No.1 as also financial investments made by the plaintiff/respondent No.1 for his film "KARU" are in deep peril.

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14. The plaintiff/respondent No.1 filed C.S.No.65 of 2018 in this Court claiming the following reliefs:

"(i) declaring that the plaintiff is the prior and

registered title holder of the Tamil feature film titled "Karu" and its rights, title, copyright and nomenclature solely and exclusively belongs to the plaintiff;

- (ii) grant permanent injunction, restraining defendant Nos.1, 5, 6 and 7, their men, agents and/or anybody claiming or acting through or under them, from in any manner imitating and infringing plaintiff's copyrights over its original motion film titled "KARU" (Tamil) with any other suffix or prefix or other word in connection to this title either in theatres, Qube, UFO, PXD or any other mode of exhibition;*
- (iii) award cost of suit, and*
- (iv) grant such further or other relief."*

15. The plaintiff/respondent No.1 filed an interlocutory application, being O.A.No.72 of 2018 in the said suit, praying for ad interim injunction restraining Defendant Nos.1, 5, 6 and 7 in the suit, i.e., the appellant and Respondent Nos.5, 6 and 7 in this appeal, their men, agents or anybody claiming or acting through or under them from imitating and infringing in any manner, the copyright of the plaintiff/respondent No.1 over its original motion film titled "KARU"

(Tamil) with any other suffix or prefix or any other word joined to the title "KARU".

16. The appellant/first defendant affirmed a counter-affidavit to the Interlocutory Application contending that the film produced by the appellant/first defendant is registered as "LYCAVIN KARU" and Censor certificate has also been obtained under the aforesaid name. The appellant/first defendant contends that the title of the film of the appellant/first defendant is different from the title "KARU" of the film, which is being produced by the plaintiff/respondent No.1. The appellant/first defendant further contends that while the film produced by the plaintiff/respondent No.1 is a thriller, the film "LYCAVIN KARU" of the appellant/first defendant is based on a ghost story. There is no similarity between the two films.

17. According to the appellant/first defendant, initially on 26.4.2017, the second defendant/respondent had registered the title "KARU" in the name of M/s.Think Big Studios, represented by its Partner Mr.A.L.Azhagappan.

18. Mr.PL.Narayanan appearing on behalf of the appellant/first defendant submitted that the appellant/first defendant modified the title of the film after obtaining 'No objection' from M/s.Think Big Studios and registered the title of its film as "LYCAVIN KARU" on 28.9.2017.

19. The suit filed by the plaintiff/respondent No.1 is for an injunction restraining, inter alia, the appellant/first defendant from ***imitating or infringing plaintiff/respondent No.1's copyrights over its original motion film titled "KARU" (Tamil) with any other suffix or prefix or any other word.*** The plaintiff/respondent No.1 has also sought a declaration that the plaintiff/respondent No.1 is the prior and registered title holder of the Tamil feature film "KARU" and its rights, title, copyright and nomenclature.

20. It is well settled that interim orders can only be claimed in aid of the final reliefs in the suit. The prayer in the application was for an order restraining the appellant/first defendant and defendants 5, 6 and 7/respondents 5, 6 and 7 from from imitating and infringing plaintiff/respondent No.1's ***copyrights*** over its original motion film titled "KARU".

21. Admittedly, the disputes relate only to the title "KARU". It is nobody's case that the film of the appellant/first defendant is a copy of the film that is being produced by the plaintiff/respondent No.1. The themes of the two films are admittedly different.

22. In India, copyright is a statutory right recognised and protected by the Copyright Act, 1957. Sections 13 and 14 of the Copyright Act, 1957 provide as follows:

"Section 13. Works in which copyright subsists.—

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

- (a) original literary, dramatic, musical and artistic works;*
- (b) cinematograph films; and*
- (c) sound recording.*

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41 apply, unless,—

- (i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date*

of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than a work of architecture, the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of work of architecture, the work is located in India.

Explanation.— In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist—

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

(b) in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the sound recording is made.

(5) In the case of work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction.

Section 14. Meaning of copyright.-

(1) For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

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

(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);

(b) in the case of a computer programme,—

- (i) to do any of the acts specified in clause (a);
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

(c) in the case of an artistic work,—

- (i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction 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 adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);*

(d) in the case of a cinematograph film,—

(i) to make a copy of the film, including—

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it including storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;

(iii) to communicate the sound recording to the public.

Explanation.- For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation."

23. The expressions "infringing copy"; "artistic work"; "cinematograph film"; "dramatic work"; "literary work"; "visual recording"; "work"; "work of joint authorship" and "author" have been defined in Section 2 (m), (c), (f), (h), (o), (xxa), (y), (z) and (d) of the Copyright Act, 1957 as follows:

"infringing copy" means, -

- (i) *in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;*
- (ii) *in relation to a cinematographic film, a copy of the film made on any medium by any means;*
- (iii) *in relation to a sound recording, any other recording embodying the same sound recording, made by any means;*
- (iv) *in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance,*

if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

"artistic work" means,—

- (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) an work of architecture; and
- (iii) any other work of artistic craftsmanship;

"cinematograph film" means any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;

"dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film;

"literary work" includes computer programmes, tables and compilations including computer databases;

"visual recording" means the recording in any medium, by any method including the storing of it by any electronic means, of moving images or of the representations thereof, from which they can be

perceived, reproduced or communicated by any method.

"work" means any of the following works, namely:—

- (i) a literary, dramatic, musical or artistic work;*
- (ii) a cinematograph film;*
- (iii) a sound recording;*

"work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors;

"author" means, —

- (i) in relation to a literary or dramatic work, the author of the work;*
- (ii) in relation to a musical work, the composer;*
- (iii) in relation to an artistic work other than a photograph, the artist;*
- (iv) in relation to a photograph, the person taking the photograph;*
- (v) in relation to a cinematograph film or sound recording, the producer; and*

in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created."

24. Section 16 of the Copyright Act, 1957 provides 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 the said Act or of any other law for the time being in force. But nothing in Section 16 of the Act is to be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

25. A conjoint reading of Sections 13 and 16 of the Copyright Act makes it clear that what is protected under the Copyright Act is the work which is relatable to a cinematograph film, that is to say, the visual recording, including sound recording, produced by process analogous to cinematography. The title, which may be a commonly used word, cannot be protected under the law of copyright. Section 13 makes it clear that there is no copyright in a title, it is the entire work which is protected by copyright.

26. On a plain reading of Section 13 of the Copyright Act, 1957, copyright subsists in, *inter alia*, original works including original literary, dramatic and artistic works and cinematograph films. A title is not an original literary work, as held by the Supreme Court in *Krishika Lulla and others v. Shyam Vithalrao Devkatta and another*, reported in

(2016) 2 SCC 521. A title does not qualify for being described as work. It is incomplete in itself and refers to the work that follows.

27. In *Krishika Lulla*, supra, the Supreme Court was considering the title "Desi Boyz" of the film released by the appellants on a story written by Milap Zaveri. The Supreme Court observed that the words "Desi" and "Boys" were quite common in India and their combination also produced a commonly understood expression. The words were, therefore, not protectable either on the basis of copyright or trade mark, or in passing off action.

28. In *Krishika Lulla*, supra, the Supreme Court quoted and approved the principle enunciated in the following passage from *Copinger and Skone James on Copyright*, 16th Edition:

"Names and titles as literary works.—In the same vein is the reluctance of English courts to confer copyright protection on titles of newspapers, magazines, books and the like. In relation to books in particular, the title normally forms part of a copyright work consisting of the book as a whole and the issue here may be whether the copying of the title amounts to the taking of a substantial part of the whole work. General statements can nevertheless be found in non-copyright cases to the effect that there is no property in a name

or title standing alone unless it is the subject of goodwill or a registered trade mark."

29. In *E.M.Forster v. A.N.Parasuram*, reported in AIR 1964 Mad 331, a suit filed by E.M.Forster for alleged infringement of copyright in the title of his book "A Passage to India", the adoption of the title "E.M.Forster, A Passage to India, Everyman's Guide" by the defendants was held not to infringe copyright as there was no copyright in respect of the title. This Court held thus:

"... As we have earlier affirmed, there is no copyright in the title and purchasers, whether of the original work or of the guide, are most unlikely to be illiterate, or unacquainted with English. It will be perfectly clear to them, from the words enclosed in brackets as a subtitle, that they were acquiring, not the original work, but a 'guide for university students'."

30. In *Kanungo Media (P) Limited v. RGV Film Factory*, reported in (2007) 1 Del 1122, A.K.Sikri, J, held as under:

"12. ... What, therefore, follows is that if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone."

31. In the instant case, it is not in dispute that there is no originality in adoption of the title "KARU", which is a common Tamil word, which means "*foetus*" and figuratively "*concept*" and/or "*theme*".

32. In the proceedings before the learned Single Bench and before us, it was the specific case of the plaintiff/respondent No.1 that the second and third defendants/respondents were two entities with which producers of Tamil films register the title of the films they intend to make.

33. Mr.V.Raghavachari argued that a producer registers the title of a film either with the second defendant/respondent or with the third defendant/respondent. It is the practice for the second and third defendants/respondents to exchange the names which are registered with them and to ensure that the same title or similar titles with minor variations and/or prefix and/or suffix are not registered by more than one producer. Mr.Raghavachari submitted that the second defendant/respondent and the third defendant/respondent do not issue title registration certificates without getting clearance from each other.

34. Mr.Raghavachari further argued that it had become an established practice in the Cinema industry for producers to become members of organisations such as the second and the third defendant/respondent and get the titles of films registered and once a title was registered, no other producer could make a film under a title that had been registered or title similar thereto. The titles which were registered could not even be used with a suffix or prefix.

35. Mr.PL.Narayanan appearing on behalf of the appellant/first defendant, however, took the stand that there was no such practice in the industry. The learned Single Bench, however, took note of the fact that the appellant/first defendant also claimed that it had registered its title with the second defendant/respondent to arrive at the *prima facie* finding that there was a practice in the industry, as contended on behalf of the plaintiff/respondent No.1

36. Admittedly, the third defendant/respondent is not a registered Copyright Society under Section 33 of the Copyright Act, 1957 and thus incompetent to administer any right in any work including cinematograph films. There is also no statutory basis for the alleged trade practice on the basis of which the plaintiff/respondent

No.1 has claimed relief in the suit, which is admitted. As observed above, there is no copyright in a mere title.

37. As argued by Mr.PL.Narayanan, the appellant/first defendant is not a member of the third defendant/respondent with whom the plaintiff/respondent No.1 has registered the title "KARU". The appellant/first defendant is, therefore, not bound by the rules and regulations of the third defendant/respondent, and has no contractual obligation not to produce a film with a title which is the same as, or similar to the title registered by the plaintiff/respondent No.1 with the third defendant/ respondent.

38. In the plaint and in the application for interim relief, the plaintiff/respondent No.1 claimed that the plaintiff/respondent No.1 was entitled to the protection available under the rules of the third defendant/respondent. However, entitlements, if any, of the plaintiff/respondent No.1 under the rules of the third defendant/respondent cannot be enforced against third persons who are not members of the third defendant/respondent.

39. The film of the plaintiff/respondent No.1 has not even

been completed or released. It is nobody's case that the title has acquired any goodwill or reputation. On the other hand, the film of the appellant/first defendant has been completed and is due to be released. In our considered view, the balance of convenience must weigh against the grant of an injunction in favour of the plaintiff/respondent No.1.

40. The judgment of the Delhi High Court in *Biswaroop Roy Choudhary v. Karan Johar*, reported in 2006 (33) PTC 381 (Del.), cited by Mr.PL.Narayanan, pertains to the Trade Marks Act, 1999, and thus clearly distinguishable. However, we approve the principle that Courts should be wary to injunct use of words or phrases in common parlance in respect of which a claim for exclusive use is staked by an applicant for injunction. In the aforesaid case, the Delhi High Court refused injunction to restrain use of the title "Kabhi Alvida Naa Kehna" in a passing off action, with the observation that neither of the parties had authored or conceived the catchy phrase which was on the lips of any number of persons on any given day, throughout India, by reason of popularity of a song "Kabhi Alvida Naa Kehna". In this case, "KARU", as observed above, is a common Tamil word which literally or scientifically means "foetus" and figuratively means "concept" and/or

“theme”.

41. In *T.Pandiyar Arivali v. Kamal Hassan*, reported in 1995 (2) LW 347, a Division Bench of this Court declined to grant injunction sought by the plaintiff claiming copyright in the title of a book “*Magalir Mattum*” in Tamil, which he had got registered with the Registrar of Copyright. The Division Bench held:

“4. It is generally acknowledged by the Court in India that the definitions in sections 13 and 14 of the copyright act, 1957, do not go beyond the literary work or musical work and the title ordinarily of any such work is not a part of composition or work of the author or the composer. His workmanship is confined to the work and not to the title. It is indeed the law that there is no property in the name which is the term of description used to identify the work and any other person can, with impunity, adopt it.”

42. Judicial discipline demands consistency in rendering judgments. A Bench of the High Court cannot take a view contrary from the one taken by another Bench of co-ordinate strength of the same High Court.

43. It is true that not everything said by a Judge in his judgment constitutes a precedent. What is binding is the principle on

which a case is decided. It is, therefore, important to analyse a decision and segregate the *ration decidendi*, which is to be followed as a precedent.

44. In *Islamic Academy of Education v. State of Karnataka*, reported in (2003) 6 SCC 697, the Supreme Court held:

"139. A judgment, it is trite, is not to be read as a statute. The *ratio decidendi* of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The *ratio decidendi* of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. (See *Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj* [(2001) 2 SCC 721] .)

140. In *Padma Sundara Rao v. State of T.N.* [(2002) 3 SCC 533] it is stated: (SCC p. 540, paragraph 9)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 : (1972) 1 All ER 749 (HL)] (Sub

nom British Railways Board v. Herrington). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

(See also *Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496] .)*

141. In *General Electric Co. v. Renusagar Power Co. [(1987) 4 SCC 137]* it was held: (SCC p. 157, paragraph 20)

"As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes.

45. According to settled theory of precedents, every decision contains three basic postulates, – (i) finding of facts, direct and inferential; (ii) statements of the principles of law applicable to the legal problems that arise in the facts of the case; and (iii) judgment based on the combined effect of the above.

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46. As held by the Supreme Court in *Union of India v. Chajju Ram, reported in (2003) 5 SCC 568*, a judgment and/or decision is an

authority for what it actually decides. What is of essence is its ratio, which is the issue raised and decided, and not every observation made in the judgment, or what logically follows therefrom. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved. The enunciation of the reason or principle on which a question has been decided is alone binding as a precedent.

47. Therefore, in order to understand and appreciate the binding force of a decision, it may be necessary to see what were the facts in the case in which the decision was given, and what was the point which had to be decided.

48. In *R.Radhakrishnan v. A.R.Murugadoss and the Film and Television Producers Guild of South India*, reported in AIR 2014 Mad 25, the question was whether the respondent could be enjoined from using the title of the applicant's film. The learned Single Bench quoted with approval the decision of the Delhi High Court in *Kanugo Media (P) Ltd. v. RGV Film Factory and others*, reported in (2007) 34 PTC 591 (Delhi), which is as follows:

"11. It is common, rather imperative, to give title to literary or entertainment works. Like human beings, literary work produced by the author or the work of

entertainment produced by a producer needs a name. It is only then such work would be identified. The term 'literary title' is used to encompass titles of books, periodicals, newspapers, plays, motion pictures, television series, signs, phonograph records, cartoon features and the like (Mc Carthy on Trademarks and Unfair Competition, Third Edition (1995) Vol.I)

12. American Courts have taken uniform view that title alone of a literary work cannot be protected by Copyright Law. Copying of a title alone, and not the plot, characterization, dialogure, song etc. is not the subject of Copyright Law. Thus, a copyright on a literary work would not include exclusive right to use the title on any other work. What, therefore, follows is that if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone. Same is the position under Copyright Law in India."

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49. Relying on the aforesaid judgment, the Single Bench of this Court held that the applicant had no case on the copyright in respect of the title "Raja Rani".

50. The ratio decidendi in *R.Radhakrishnan*, supra, is that there is no copyright in the title of a literary work or a cinematograph film. This proposition of law operates as a precedent to be followed by Bench of co-ordinate strength

51. In our view, judicial propriety demands that a Single Bench should follow the verdict of the other Single Bench and if it is unable to agree, the Single Bench should refer the matter to the Chief Justice for constitution of a Division Bench. The learned Single Bench fell in error in holding that the judgment of the Single Bench in *R.Radha Krishnan v. A.R.Murugadoss*, reported in 2013 (5) LW 429 was distinguishable on facts. The learned Single Bench should have appreciated minor differences like one film being a short film and the other film being a feature film could not make any difference to the proposition that there was no copyright to a title.

52. A judicial decision is often read by a process of reasoning on the basis of material facts under immediate consideration. The conclusion is the decision. In the vast majority of cases, it will be the application of the existing law to the facts judicially asserted. However, facts in different cases are seldom identical. Minor differences in facts would not denude a decision of its precedential value and in distinguishing a precedent on the ground of factual differences, it would be necessary to clearly indicate the distinguishing features and how the distinguishing features could have rendered the proposition of law enunciated and/or re-enunciated in the decision inapplicable. The learned Judge has, with the greatest of respect, not indicated the reasons for his view that the distinguishing features noted in the judgment under appeal render the judgments cited on behalf of the appellant/defendant No.1, holding that there was no copyright in a title, inapplicable.

53. The provisions of the Copyright Act, 1957 and in particular, the wide definition of "infringing copy" in relation to cinematograph film in Section 2(m)(ii), to mean a copy of the film made on any medium, by any means, makes it clear that the

proposition laid down in the judgment of this Court in R.Radhakrishnan, supra, and the judgment of the Supreme Court in Krishika Lulla, supra, that there is no copyright in a title, would apply to all feature films.

54. While it is correct to say that a judgment is to be construed and interpreted in the background of the facts in which the judgment is rendered and a judgment may not operate as a precedent in an altogether different factual setting, at the same time, no two cases can be identical. Minor differences in facts do not denude a judgment of its precedential value.

55. A perusal of the plaint and the interlocutory application and particularly the prayers made therein clearly indicate that the claim of the plaintiff/first respondent was mainly based on his claim to copyright in his film, of which the title "KARU" was an integral part. The plea of existence of an established trade/industry practice was raised as an alternative contention.

56. We are also unable to agree with the conclusion of the learned Single Bench that there is certainly a trade practice with

regard to registration of title for a movie in the Tamil cinema industry, as claimed by the plaintiff/respondent No.1. There are no materials on record which conclusively establish the existence of a practice in the industry for registration of titles or desisting from using titles registered by others.

57. In course of arguments, it transpired that it was not mandatory for producers to become members of the second defendant/respondent or the third defendant/respondent. Membership of either society was entirely optional and there were many producers who were not members either of the second or of the third defendant/respondent.

58. In this context, it would be pertinent to refer to the rules and regulations for registration of motion picture titles / video / film / album under Titles Registration Scheme of the third defendant/respondent and in particular the following rules:

"8. If production work has not commenced during the year i.e. during the registration period of One Year of title then renewal for another (six) 6 months only will be considered by the Executive Committee, on furnishing satisfactory reasons, for delay in starting the production.

9. In registering any title for a film of Guild takes no responsibility whatsoever in regard to and infringement of copyright or any other legal right and Titles Registration is done purely on "Self Regulation Scheme", Guild does not take any legal responsibilities pertaining to Titles Registration."

59. From the materials disclosed before us, it has not appear that the plaintiff/respondent No.1 commenced production within one year from the date of registration. The materials show that film pooja was performed by the plaintiff/respondent No.1 on 09.09.2013, even though the title was registered on 03.11.2011. More over, as per the rules, if production work does not commence during the year of registration, then renewal for another six months only was to be considered by the Executive Committee on furnishing satisfactory reasons. In any event, the third defendant/respondent takes no responsibility whatsoever with regard to infringement of copyright or any other legal right and title registration was done purely on **"Self Regulation Scheme"**.

60. Admittedly, there is no statute, rule or regulation which at all requires the registration of a title for production of a film. Had

the appellant/first defendant and the plaintiff/respondent No.1 been members of the same organisation, they may have contractually been bound by the internal rules and regulations of the organisation. However, the plaintiff/respondent No.1 is not bound by the rules of the second defendant/ respondent and the appellant/first defendant is not bound by the rules of the third defendant/respondent.

61. The earlier registration by the plaintiff/respondent No.1 of the title "KARU" with the third defendant/respondent does not confer any right to the plaintiff/respondent No.1 to exclusive use of the title so registered, to the exclusion of other producers. Whether or not there is any dispute with regard to the dates of registration of the respective titles of the plaintiff/respondent No.1 and the appellant/first defendant, is in our view, not material.

62. The learned Single Bench fell in error of law in arriving at the conclusion that the plaintiff/respondent No.1 had *prima facie* case as the plaintiff/respondent No.1 had registered the title "KARU" for the motion picture as early as on 03.9.2011 and had renewed the same from time to time.

63. The learned Single Bench has apparently been swayed by the fact that the appellant/defendant No.1 was a large production house unlike the plaintiff/respondent No.1 and that the plaintiff/respondent No.1 had made huge investments for production of the film "KARU" which was almost 90% complete. Sympathy for a weaker party to a litigation cannot outweigh the law pronounced by the Court. Further more, the learned Single Bench ignored the fact that the appellant/first defendant had also made substantial investments for its film which had been completed and was due to be released on 23.02.2018. The learned Single Bench, in our view, also erred in law in giving undue importance to the size of depiction of LYCAVIN before KARU since the suit was not one for passing off.

64. It is true that simultaneous release of cinematographic films of the same title is likely to cause confusion in the mind of the viewers. However, in this case the release is not simultaneous. The plaintiff/respondent No.1's film has not been completed. In the absence of any statutory or contractual right, the plaintiff/respondent No.1 cannot injunct others from using a title. In any case, the title is different preceded by "LYCAVIN KARU". Even assuming that the cinematographic film of the plaintiff/respondent No.1 is 90% complete

as claimed, the film of the appellant/first defendant is complete and scheduled to be released on 23.02.2018, which is tomorrow. We are informed that the date of the release has likely been postponed by reason of the interim injunction passed by the learned Single Bench. The interim order of the learned Single Bench cannot be sustained and the same is set aside.

The appeal is, accordingly, allowed. No costs. Consequently, CMP.Nos.3492 & 3493 of 2018 are closed.

(I.B., CJ.) (A.Q.,J.)
22.02.2018

Index : Yes/No
Internet : Yes/No

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Note: Order copy be issued on 23.02.2018.

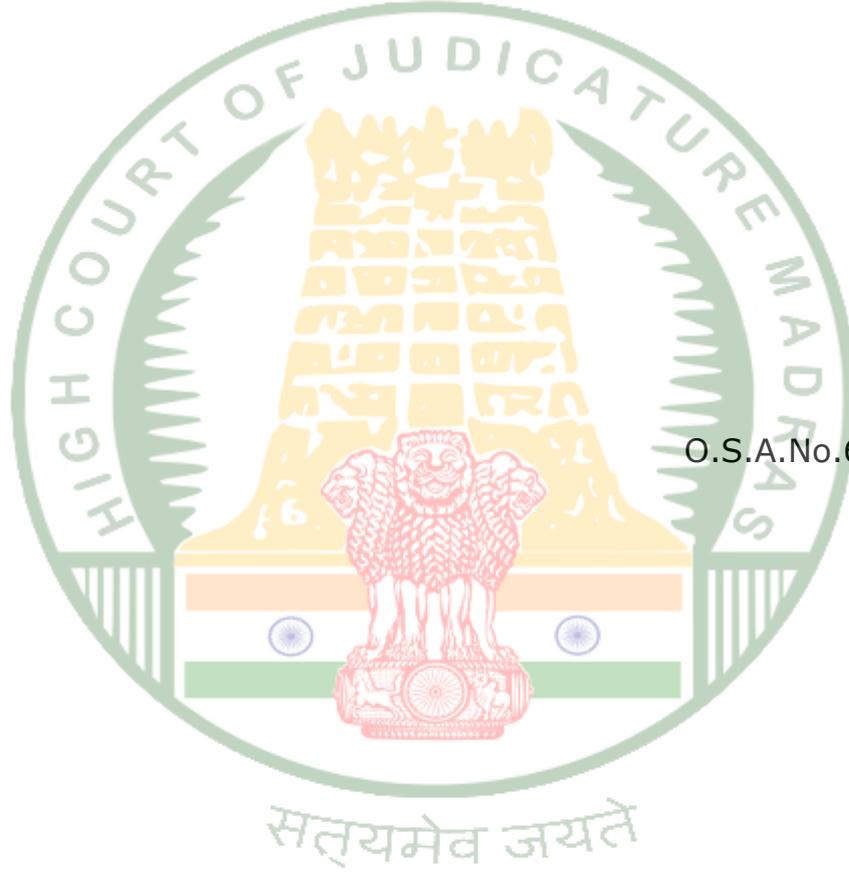
To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

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The Hon'ble Chief Justice
and
Abdul Quddhose, J.

(bbr/sasi)



O.S.A.No.63 of 2018

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22.02.2018