

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.SOMARAJAN**

**TUESDAY, THE 29<sup>TH</sup> DAY OF MARCH 2022 / 8TH CHAITHRA, 1944**

**FAO NO. 9 OF 2022**

**AGAINST THE JUDGMENT IN IA 1/2021 IN OS (COPYRIGHT) 44/2021 OF VI**

**ADDITIONAL DISTRICT COURT, ERNAKULAM**

**APPELLANTS/PETITIONERS/PLAINTIFFS IN TRIAL COURT:**

- 1 SURYANSH BROADCASTING PVT LTD  
XI/234-B, NEAR GANDHI SQUARE, MANEED, PIRAVOM, ERNAKULAM,  
KERLA-686664.
- 2 MR.R SREEKANTAN NAIR  
MANAGING DIRECTOR, M/S SURYANSH BROADCASTING PVT LTD,  
(FLOWERS CHANNEL) HAVING ITS ADMINISTRATIVE OFFICE AT B-6,  
ABM TOWERS, KADAVANTHARA ERNAKULAM-682020.

BY ADVS.  
C.UNNIKRISHNAN (KOLLAM)  
ANANDA PADMANABHAN  
MAHESH CHANDRAN  
DEEPA JOSE GEORGE  
M.R.SUDHEENDRAN  
UTHARA A.S  
VIJAYKRISHNAN S. MENON  
SARITHA NANDANAN

**RESPONDENTS/RESPONDENTS/DEFENDANTS IN THE TRIAL COURT:**

- 1 M/S. ZEE ENTERTAINMENT ENTERPRISES LTD.  
SL TOWER, FIRST FLOOR, PONNURUNNI NORTH,  
VYTTILA P O, ERNAKULAM-682019.
- 2 CHAIRMAN AND MANAGING DIRECTOR  
M/S ZEE ENTERTAINMENT ENTERPRISES LTD.  
SL TOWER, FIRST FLOOR, PONNURUNNI NORTH,  
VYTTILA P O, ERNAKULAM-682019.

R1 BY ADVS.  
HARINDRANATH,  
SANTHOSH MATHEW  
VIJAY V. PAUL  
GOKUL ASOK  
WAFI KHATHEEJA  
SHERYL ELIZABATH SEBASTIAN

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON  
29.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

The dispute between two channels with respect to two programmes, one by the name '*Uppum Mulakum*' and the other by the name "*Erivum Puliyum*' ended in a suit initiated for the grant of mandatory injunction and permanent prohibitory injunction, in which an interlocutory application was also filed for getting a temporary injunction from telecasting and airing the programme in imitation of the programme by name '*Uppum Mulakum*' under the caption '*Erivum Puliyum*'. The trial court on hearing both the parties granted injunction in part pertaining to four episodes already covered by that time, but, refused to grant the remaining part of the injunction with respect to the programme that may be aired and telecasted in future, against which the plaintiffs came up in appeal aggrieved by the non grant of the

remaining part of the injunction.

2. The plaintiffs claim copyright over their programme by the name '*Uppum Mulakum*'. It was started in the year 2015, more specifically 14.12.2015 and as on the date of the suit and interim injunction application, in and around 1206 episodes were telecasted. It is submitted that it has attracted wide appreciation from the viewers and thereby it has become one of the stellar programs telecasted by the plaintiffs. It is during the last Onam period, four episodes were telecasted by the defendants-media by using the very same characters involved in '*Uppum Mulakum*' through the very same actors. As such, a notice was issued to the defendants to stop their programme and further telecast.

3. Originally, four episodes were telecasted using the very same characters and actors based on a normal life of a Hindu family and family issues. The family consists of

members with a close resemblance of the family members involved in the theme under "Uppum Mulakum", the stellar programme of the plaintiff/appellant media. On receipt of the notice, the defendant/respondent media changed their programme, though the earlier name "Erivum Puliyum" was adopted for telecasting further episodes, in which, the entire theme was changed from a Hindu family to Christian Anglo-Indian family with the very same actors resembling the characters employed in the programme "Uppum Mulakum" and the very same actors were employed with an addition of two or three characters in the programme of respondent/defendant company and stopped the further telecasting of earlier four episodes.

4. According to the plaintiff, the defendant/respondent has no right to proceed with their programme by name "Erivum Puliyum" since there is close resemblance of their stellar programme "Uppum Mulakum" and the actors

employed are none else, the very same actors employed in their stellar programme and it may cause a reasonable doubt as to its identity that it would be the very same stellar programme of the plaintiff media. But, it is an admitted case that except the earlier four episodes, the theme employed in the programme under challenge (*Erivum Puliyum*) is not based on the normal sequences of issues involved in a Hindu family and its exposure, but based on a Christian Anglo-Indian family and the family issues. It is submitted that there may be some close resemblance of the theme employed. But that itself is not sufficient in order to bring out a case of violation of copy right.

5. It is submitted by the learned counsel for the plaintiffs that, what is aired and telecasted in the name and caption of '*Erivum Puliyum*' by the defendants is the exact similar version of their stellar programme '*Uppum Mulakum*', but, with slight variations and two

other characters were also introduced for that purpose. It is submitted that it will create an opinion in the mind of viewers that both programs are in the same theme, same plot and within the very same atmosphere. The learned counsel also relied on a Division Bench decision rendered by the Bombay High Court in **Zee Telefilms Ltd. & another v. Sundial Communication Pvt. Ltd. & others [2003(5) Bom.C.R.404]**, wherein the earlier legal position settled by the Apex Court in **R.G.Anand v. M/s. Delux Films and Others [(1978) 4 Supreme Court Cases 118]** was also relied on. At this juncture, it is material to have an understanding with respect to what actually amounts to the expression "copyright". It is defined under Section 14 of the Copyright Act, which is extracted below for reference:-

*"14. Meaning of copyright.—For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or 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);

<sup>2</sup>[(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 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);*

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

- (i) to make a copy of the film including a photograph of any image forming part thereof;*
- (ii) to sell or give on hire*



- or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;*
- (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;*
- (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;*
- (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.]”*

4. It is submitted by the learned counsel for the plaintiffs that the act of the defendants would squarely come under the purview of Section 14(a)(vi) of the Copyright Act. The

Division Bench of the Bombay High Court while dealing with the matter in the abovesaid decision, considered the application of Section 17 of the Copyright Act, which deals with the ownership of the copyright by referring the legal position settled by the Apex Court in **R.G.Anand's Case** (*Supra*), wherein seven propositions were laid down by the Apex Court in order to test whether it would violate copyright, which are extracted below for reference:

- "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 words 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 a 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."*

5. Admittedly, the plaintiffs did not have any case that there is verbatim reproduction or adaptation of their stellar programme 'Uppum Mulakum' in the episodes of the defendants by the name 'Erivum Puliyum'. Of course, it is a visual media consisting of audio and video. Insofar as the video is concerned there is no

verbatim reproduction or even an imitation to satisfy the requirements as embodied under Section 14 of the Copyright Act. The characters were employed in two different family set up and they are somewhat identical in their roles, especially in the matter of a character by name 'Mudiyan'. Then the question is whether it is sufficient to bring up the matter within the sweep of section 14 of the Copyright Act, that is to say, as argued by the learned counsel for the appellants, within the scope of Clause (vi) of Section 14 (a) of the Act. To that extent, it is worthwhile to look into the seven propositions laid down by the Apex Court in the **R.G.Anand's Case** (*Supra*) that there cannot be any copyright in an idea, subject matter, themes, plots, or historical or legendary facts. It is further laid down by the Apex Court that in such a situation, the violation of copyright will stand confined only to the form, manner, arrangement and expression of the idea by the

author of the copyrighted work. This would make the legal position crystal clear that the form, manner, arrangement and expression of the idea employed by the copyrighted work alone would constitute a ground for an action under the Copyright Act and there cannot be any copyright with respect to idea, subject matter, themes, plot, or historical or legendary facts. This would show that when something is incorporated as a new version or a new idea apart from the general idea, subject matter, themes, plot etc., the user of the newly invented or incorporated idea alone would stand capable of bringing the matter within the purview of violation of copyright. Otherwise, there cannot be any violation at all. It is also made clear by the Apex Court that when an idea was originated or developed from a source being common, similarities are bound to occur, and unless the fundamental or substantial aspects of the mode of expression adopted in the copyrighted work,

the same cannot be brought under the purview of violation. In other words, the matter of sequence that can be originated may sometime be similar to the copyright claimed by the other party and it would not fall under the broad spectrum of violation of the copyright. It has to be read along with the case that they did not have any case of verbatim reproduction of their programme in the disputed episodes. Section 14(a)(vi) would make any adaptation of the work within the sweep of the meaning of copyright, for which there should be evidence or prima facie satisfaction regarding the adaptation made. Mere employment of very same actors in a different atmosphere, though it is pertaining to the day-to-day life of a family may not by itself bring the matter within the sweep of the copyright as defined under Section 14, especially when one is dealing with a Hindu family and the other one is dealing with a Christian Anglo-Indian family. It is also



submitted that what is involved in the script, if any, available or theme employed is the spontaneous behaviour of the family members, in identical two families, one belongs to a Hindu family, the other belongs to a Christian family may not by itself bring the matter within the sweep of violation of copyright. What actually makes the difference between these two, must be understood with the main theme, over which there cannot be any copyright. If there is any new invention employed by the author or the person who claims copyright and if it is adopted substantially, certainly it would attract Clause (vi) of Section 14(a), for which there should be special pleading in the plaint with respect to those portions with their grievance. Unfortunately, there are no such pleadings either in the plaint or in the interlocutory application with respect to the words or the theme, or the way and manner in which it was invented into the programme. Copyright is

actually intended to protect the work of a particular person or group of persons or a firm whatever it may be, but that does not mean that it is not permissible to adopt the very same theme or plot or idea or subject matter by others unless the same is having an individual nature of its own with the employment of an invention made by the creator apart from the generality of idea, theme or plot and its natural sequences. In short, insofar as the actual sequences, or the family affairs or the discussion made in the family affairs or spontaneous expression made between the family members and the result of future planning, etc., unless satisfies the test as mentioned above, cannot be brought under the meaning of copyright as embodied under Section 14 of the Copyright Act.

6. Ext.A5 Pen drive was produced along with the plaint in order to show the similarities between the two programs. As discussed earlier

mere similarities will not come under the purview of copyright as made mentioned in Section 14 of the Copyright Act, unless it satisfies the various clauses incorporated therein.

7. Further, there can not be an interim temporary injunction with respect to a matter constituting minute details, which cannot be put under the surveillance by the Court. In such cases, the remedy is by way of damages, if any, sustained and not the grant of an interlocutory order of injunction. Hence, by maintaining the order passed by the trial court, I am of the view that it is fit and proper to direct the trial court to expedite the disposal of the suit untrammelled by any of the observations made mentioned in the impugned order as well as this judgment and the trial court shall expedite the trial within a period of six months from the next posting of the suit.

8. There will be a direction to the

Registry to return the Sealed cover kept in Registrar's (Judicial) office as item No.349 to the concerned counsel on proper receipt.

The appeal will stand dismissed. No order as to cost.

**Sd/ -**

**P. SOMARAJAN**

**JUDGE**

SPV