



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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RESERVED ON : 18.04.2023

PRONOUNCED ON : 15.06.2023

**CORAM:**

THE HONOURABLE MR.JUSTICE S.SOUNTHAR  
C.S.No.914 of 2010

Aarur Tamilnadan

... Applicant/Plaintiff

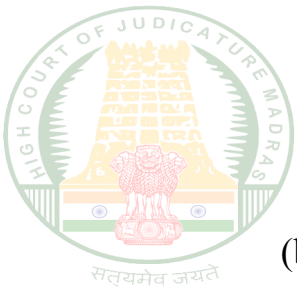
vs

1.S.Sankar  
2.Sun TV Network Limited,  
Rep. By its Directors,  
Murasoli Maran Towers,  
73, MRC Nagar Main Road,  
M.R.C. Nagar Chennai – 600 028.  
(Amended as per order dated 28.09.2021  
in Application No.3227 of 2021)

... Defendants/Respondents

Prayer: Civil Suit is filed under Order VII Rule 1 CPC r/w Order IV Rule 1 of the Original Side Rules, 1956, r/w Sections 55 and 62 of the Copyrights Act, praying to,

(a) Declaration that the plaintiff is the author and first owner of the copy right of the story “Enthiran” which was stolen/pirated from the original story “Jugiba” written and got published in April 1996;



(b) Declaring that the film “Enthiran” is the infringing copy of the plaintiff's story “Jugiba”;

(c) Order directing the defendants to pay a sum of Rs.1,00,00,000/- to the plaintiff, as damages;

(d) Permanent injunction restraining the defendants, their men, agents, successors in business, legal representatives, assigns or any person claiming through them from distributing, screening and exhibiting the infringing copy namely the “Enthiran” film in any cinema hall, electronic media, open air theatre, auditorium in any exhibiting device;

(e) A Preliminary decree in favour of the plaintiff directing the defendants to render account of the profit made by the infringing copy namely “Enthiran” to the plaintiff and a final decree in favour of the plaintiff for the amount of profits thus found to have been made by the defendants;

(f) Pass such other order or orders as this Court may deem fit in the circumstances of the case.

For Plaintiff : Mr.G.Vairava Subramanian  
for M/s.P.T.Perumal  
For Respondents : Mr.Arun C.Mohan  
for M/s.D.Saikumaran for D1  
Mr.AL.Somayaji (Sr. Advocate)  
for M/s.Sneha for D2  
M/s.B.K.Girish Neelakandan for D3



## J U D G M E N T

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The suit is filed by the plaintiff seeking a declaration that he is the first owner of the copyright of the story “Enthiran” which was stolen/pirated from the original story “Jugiba” written and got published in April 1996. The plaintiff also sought for further declaration that the film "Enthiran" is the infringing copy of the plaintiff story "Jugiba" and for a consequential injunction restraining the defendants from distributing, screening and exhibiting, infringing copy namely the feature film "Enthiran". The plaintiff also prayed for direction to the defendants to pay a sum of Rs.1,00,00,000/- towards damages. He also sought for preliminary decree directing the defendants to render true account of the profit earned by them by infringing the copyright of the plaintiff and for a final decree in favour of plaintiff for the amount of profits thus found to have been earned by the defendants.

### 2. Plaint Averments

According to the plaintiff, he is a "Prolific" Tamil writer, who claimed that the plaintiff had written a story about Humanoid Robo “Jugiba” and the same was first published in a Tamil monthly Magazine "Iniya Udayam"



during April 1996. The Thumb Nail sketch of the story is as follows:

**WEB COPY** “A Scientist Robin spends a decade in the computer lab to create a super power Robot and succeeds. He names it as “Jugiba”. The Robot has the capacity to store the facts from Adam and Eve to latest Nuclear weapons. It can move its joints in any directions. It can perceive situations and act accordingly. It resembles a man and it is capable of all human activities except pro-creation. The scientist Robin was ready to present his rare scientific creation to the conference next day. Elated by his own achievement, Robin calls his love Josephin to his Robot lab to show her his “Jugiba”. In fact, he had neglected her for about a decade, spending entire life in the lab with equipments in his endeavour to develop super Robot. Robin introduced Josephin to “Jugiba” as his lover. “Jugiba” expresses its love to Josephin and insisted to live with her. Robin explains to Jugiba that it is only a metal and machine and Josephin is flesh and blood and they cannot live together. On hearing this, Jugiba cries that it cannot live without Josephin, sheds tears and jumps from the building into the street and commits suicide.”

3. In the year 2007, the same group of publishers published the very



same novel in the book titled "Thik Thik Theepika", this book was sold in all book stalls and exhibitions. The State Government has also purchased the copies of the book, for its libraries situated throughout the State. Recently, the first defendant in his capacity as a story writer and director has made a film by name "Enthiran" in Tamil and other languages. The film was produced by defendants 2 and 3. The story of "Enthiran" is nothing but the story of "Jugiba" written by the plaintiff and published in the year 1996. It was claimed that after release of the film on 01.10.2010, many friends of the plaintiff informed him that the film "Enthiran" was made based on the story of "Jugiba" in 1996. It was also claimed that though the story "Jugiba" was published in Tamil monthly magazine "Iniya Udayam" as per the understanding between the plaintiff and the publisher of "Iniya Udayam", the plaintiff is the first owner of the copyright. The story of "Jugiba" is pirated in the film "Enthiran" and the defendants never obtained any permission from the plaintiff. In spite of the knowledge that the plaintiff is the first owner of the copyright of the story, the defendants have illegally stolen the story of the plaintiff and have made a mega film of "Enthiran". The defendants made huge profits by releasing the film "Enthiran" in Tamil and other languages all over the world. The plaintiff is entitled to claim damages as per the



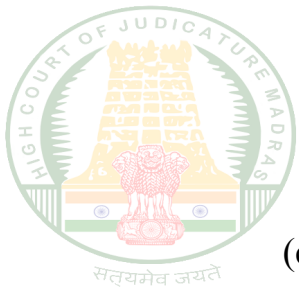
provisions of the Copyright Act. On these pleadings, the plaintiff sought for the above said reliefs.

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4. **Averments found in the written statement of the first defendant:**

It was claimed by the first defendant, the story of Humanoid Robots is several decades old and the plaintiff cannot claim to be a scientist who invented the concept of Humanoid Robot. The averment in the plaint that the film "Enthiran" is a pirated version of the story "Jugiba" was specifically denied. It was claimed by the first defendant, the story line of the film "Enthiran" is completely different. It was claimed that for several decades, the basic knowledge about the Humanoid Robot is one and the same and many movies in the past have described Humanoid Robot and as such there is no justification for the plaintiff to file the present suit. A reading and comparison of the defendants creation "Enthiran" and the alleged story of the plaintiff would establish that his story is a different one and an original creation of him. The defendant in his written statements had pointed out the following dissimilarities in his story line "Enthiran".

- (a) The Robot looks very much like the scientist who created it;
- (b) The scientist created it for serving Indian Army;



(c) The robot does not have any feelings initially and only after several accidents, with great difficulty the scientist imparted feelings in the robot;

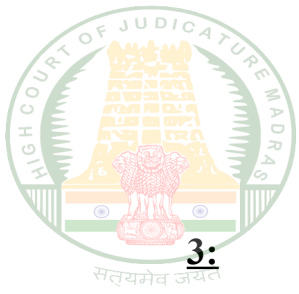
(d) The robot has been loaded with destruction software chip by the villain and it turns violent and becomes a villain in the mid-half and subsequently after removal of the chip it becomes normal;

(e) In the end, the robot was dismantled as per Court order and kept in a scientific Museum;

(f) The robot creates several robots to serve him and fight with humans.

5. It was claimed by the 1<sup>st</sup> defendant that there cannot be copyright in an idea, subject matter, themes, plots or historical legendary facts. The violation of the copyright in such cases is confined to the form, manner arrangement and expression of the idea by author of the copyright work. It is claimed that the movie "Enthiran" is a original work of the first defendant and he has got first right of ownership over the copyright.

**6. Averments found in the written statement filed by the defendants 2 and**



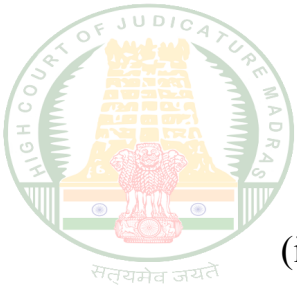
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It was claimed by the defendants 2 and 3 that the story of the defendants was presented and treated differently from that of the alleged story of the plaintiff and therefore, there cannot be a question of violation of copyright. It was further claimed that the plaintiff has come up with this suit because of the huge success of the film. It was also stated that three other persons have also approached the Court for similar relief. It was also claimed that the film is not based on the story of the plaintiff, but it was based on the work of late Sujatha who conceived the story. It was also claimed that after witnessing the success of the movie with the people, the plaintiff has come up with this suit with the intention to gain unjust enrichment. Therefore, the defendants 2 and 3 sought for dismissal of the suit.

7. On the basis of the above said pleadings the following issues were framed by this Court on 27.06.2016:

- (i) Whether the plaintiff is the author and first owner of the copy right of the story Enthiran, which was stolen from the original story?;
- (ii) Whether the film Enthiran is the infringed story of the plaintiff's 'Jugiba'?;
- (iii) Whether the plaintiff is entitled to the claim of damages?;





(iv) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?;

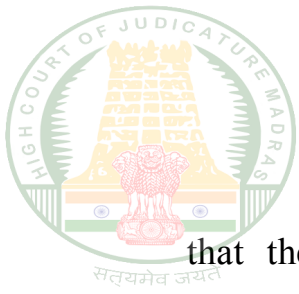
(v) Whether the plaintiff is entitled for production of accounts by the defendants of the profit made by infringing the plaintiff's story?;

(vi) To what other reliefs, the plaintiffs are entitled?

8. The plaintiff was examined as PW.1 and twelve documents were marked on the side of the plaintiff as Exs.P1 to P12. The Authorised Signatory of the 3<sup>rd</sup> defendant was examined as DW.1. No documents were marked on the side of the defendants.

9. The learned counsel appearing for the plaintiff submitted that the film "Enthiran" was based on the story "Jugiba" written in the year 1996 and hence, the defendants have committed infringement of the copyright.

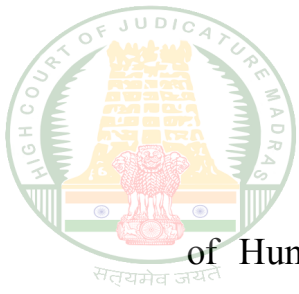
10. The learned counsel for the plaintiff by taking this Court to Exs.P1 and P2 submitted that those two documents established that the story of Humanoid Robots was written by the plaintiff under the name "Jugiba" in the year 1996 itself. The learned counsel further by referring to Ex.P3 submitted



that the first defendant in his speech during audio release of the film "Enthiran". admitted on 31.07.2010 he conceived the story line ten years back. Therefore, it is the submission of the learned counsel for the plaintiff that the film "Enthiran" is the pirated version of his story "Jugiba" published in the year 1996 under Ex.P1 and re-published in 2007 under Ex.P2.

11. The learned counsel by taking this Court to Exs.P5 and P6 submitted that he got necessary sanction from the publisher of the book "Iniya Udhayam" for filing the present suit and hence he should be treated as the copyright owner of the story and entitled to maintain the suit. The learned counsel by taking this Court to the various letters written by readers under Ex.P7 submitted that the letters written by 3<sup>rd</sup> parties, who had seen the film "Enthiran" establish, the film was based on plaintiff's story "Jugiba" and therefore, the contention of the plaintiff that "Enthiran" is a pirated version of his story "Jugiba" stands proved. Therefore, the learned counsel for the plaintiff requested this Court to pass a decree as prayed for in the plaintiff.

12. The learned counsel for the first defendant submitted that the story



of Humanoid Robot has been in existence for decades and number of

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holly wood films were shot based on the concept of Humanoid Robots. The learned counsel submitted that no person can claim the copyright over any idea and the copyright is confined only to the form of expression. The learned counsel further submitted that the plaintiff's literary work is based on the idea of Robot, falling in love with girl. However, in the "Enthiran" film shot by the first defendant, the Robot was initially developed for Indian Army. It was struck by lightning and thereafter, started learning about human feelings. Subsequently, the ROBOT falls in love with the Heroine, but unfortunately, the villain re-programed the Robot, so as to make it as an evil force to destroy the city. It was submitted by the learned counsel that the brief sequence of event in the film, wherein, the Humanoid Robot falling in love with heroine is only a minuscule part of the story line of the defendants movie which involved various other concepts mentioned above other than the idea of Robot falling in love with heroine. Therefore, the learned counsel further submitted that the story line of the film "Enthiran" completely different from that of the story line of the plaintiff's story "Jugiba". The learned counsel also submitted that the number of films were released from 1962 onwards based on the concept of Humanoid Robot and therefore merely because the defendants film



"Enthiran" is based on the concept of Humanoid Robot it cannot be treated as a pirated version. Therefore, the learned counsel prayed for dismissal of the suit.

13. The learned senior counsel appearing for the defendants 2 and 3 submitted that the plaintiff failed to plead the story line of the defendants film "Enthiran" and produce any material evidence to show that the story line of the defendants film is an infringing copy of plaintiff's story "Jugiba". The learned senior counsel submitted that no person can claim copyright over any idea, theme and copyright is confined to the expression of the idea by the author. In the present case, the plaintiff failed to examine any person who had read the story of the plaintiff and viewed the film of the defendants to prove that the story line of the defendants' film is based on the plaintiff's story "Jiguba". The learned counsel by taking this Court to the series of letters marked as Ex.P7 allegedly written by the 3<sup>rd</sup> parties submitted that the letters were written by 3<sup>rd</sup> parties from Tanjore and Pudukkottai, but it contains continuous courier serial numbers. Therefore, it is the submission of the learned senior counsel that Ex.P7 is a concocted document. It was also submitted by the learned senior counsel that as per the averments of the plaintiff, he had written the story "Jugiba" while he was working as sub editor



in Nakkiran Magazine and alleged that the story was published in "Iniya Udhayam". Therefore, as per the provision of Copyright Act, the publisher of the book is the first owner of the copyright, unless there is an agreement to the contrary. The plaintiff having failed to produce any agreement to the contrary between him and the publisher of the said magazine is not entitled to claim that he is the first owner of the copyright over the story "Jugiba". The learned senior counsel submitted that the plaintiff failed to prove that the defendants' story line in film "Enthiran" is identical to that of his story "Jugiba" by producing material evidence before the Court and having failed to establish the same, the suit filed by him is liable to be dismissed. In support of his contention, the learned senior counsel relied on the judgment *in (1978) 4 SCC 118 in R.G.Anand Vs. M/s.Delux Films and others.*

14. Issues No.1 and 2:

The present suit was laid by the plaintiff mainly on the ground that the defendants' film "Enthiran" was based on the story, originally written by him in the year 1996 under Ex.P1 with the name "Jugiba".

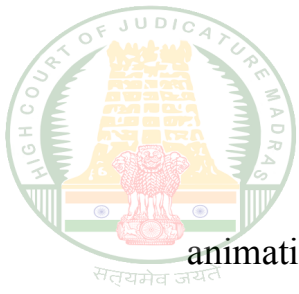
15. In support of his contention, the plaintiff entered the box and



deposed as PW.1 and he was extensively cross examined by the counsel for

the defendants, with regard to the various dissimilarities in the story line of the plaintiff story "Jugiba" and the story line in defendants' story "Enthiran".

It is the specific case of the defendants that as per their story Humanoid Robots created by the scientists resembles the face of the scientists who developed it. When suggestion was put to PW.1 that in his story Robot does not resemble the face of hero, he answered that in his story, he had not stated that Robot resembled the physical figure or face of hero. As per the defendants averments in their story, the Robot was created for serving Indian Army, when it was suggested to PW.1, as per his story Robot was not created for serving Indian Army, he answered that he depicted Robot to suit the needs of entire world. Further when it was suggested to PW.1 that in "Enthiran" movie, the Robot had been broken and thrown into the dustbin by inventor/hero, he answered that in his story the character of Robot would commit suicide but in "Enthiran" story, the Robot was forced to commit suicide. It was further suggested to PW.1 that in "Enthiran" story, when Robot had been broken and thrown into dustbin, it would be taken by the villain, repaired and revived for destructive purpose, he answered that for the sake of cinema they had added some sequences songs, fight scenes,



animations and improved the story to suit cinema audience. When a suggestion was put to PW.1 that on the basis of Humanoid Robots several hollywood movies were released, he answered that he had heard about them but had not seen them. When it was suggested to PW.1 that in his story "Jugiba" there were only three characters namely, the scientist, Robot Jugiba and Josephine, he answered in affirmative and added the defendants movie story concept was depending upon his concept.

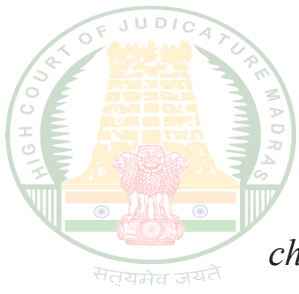
16. A close reading of evidence of PW.1, would make it clear, there are number of dissimilarities between his story "Jugiba" and the story of defendants film "Enthiran". He himself admitted during the course of evidence that the defendants have made additions to his story to suit the cinema audience. He also added that concept of the story line in defendants' film "Enthiran" is based on his story "Jugiba". It is settled law, nobody can claim any copyright over an idea or concept. The copyright can be claimed only in respect of the manner of expression of idea or concept. In this regard, it would be appropriate to refer to the observations of the Apex Court in (1978 ) 4 SCC 118 in *R.G.Anand Vs. M/s.Delux Films and others*, which reads as follows:



45. *Thus, the position appears to be that an idea, principle, theme, or subject matter or historical or legendary facts being common property cannot be the subject matter of copyright of a particular person. It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently from others. Where two writers write on the same subject similarities are bound to occur because the central idea of both are the same but the similarities or coincidences by themselves cannot lead to an irresistible inference of plagiarism or piracy. Take for instance the great poet and dramatist Shakespeare most of whose plays are based on Greek-Roman and British mythology or legendary stories like Merchant of Venice, Hamlet, Romeo Juliet, Jullius Caesar etc. But the treatment of the subject by Shakespeare in each of his dramas is so fresh, so different, so full of poetic exuberance, elegance and erudition and so novel in character as a result of which the end product becomes an original in itself. In fact, the power and passion of his expression, the uniqueness, eloquence and excellence of his style and pathos and bathos of the dramas become peculiar to Shakespeare and leaves precious little of the original theme adopted by him. It will thus be preposterous to level a*

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*charge of plagiarism against the great play-wright. In fact, throughout his original thinking, ability and incessant labour Shakespeare has converted an old idea into a new one, so that each of the dramas constitutes a master-piece of English literature. It has been rightly said that "every drama of Shakespeare is an extended metaphor". Thus, the fundamental fact which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is to determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super additions or embellishment here and there. Indeed, if on a perusal of the copyrighted work the defendant's work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in a different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adapted by him. In the latter case there is no violation of the copyright.*



46. Thus, on a careful consideration and

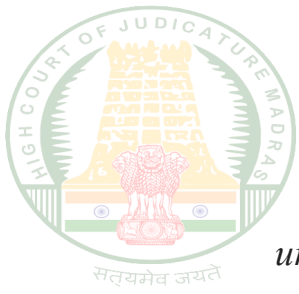
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elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge :

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 copyright 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 limitation 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



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*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, a 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*



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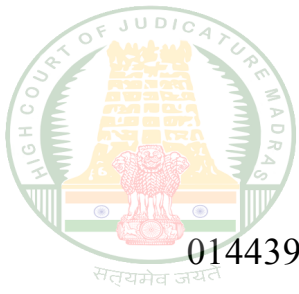
*viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.*

17. Therefore, as held by the Hon'ble Apex Court in *R.G.Anand Vs. M/s.Delux Films and others*, there can be no copyright over an idea or concept. A reading of the evidence of PW.1 would make it clear that both the story of the plaintiff and the defendant are based on Humanoid Robots. However, as seen by the admissions of PW.1 to various suggestions made to him during cross examination, with regard to the dissimilarities in the story line of defendant's film "Enthiran", the story of Humanoid robot appeared to have been presented to audience by the defendants with a different expression. PW.1-himself had admitted there are additions to suit the cinema audience. When both the stories are based on the same idea namely Humanoid robot falling in love with a human being, similarities, are bound to occur. As held by the Apex Court in *R.G.Anand Vs. M/s.Delux Films and others*, it is for the Courts to determine, whether the similarities are fundamental or substantial aspects of the mode of expression. The plaintiff



has not examined any independent witnesses to prove that the similarities in the story of the plaintiff and the story of the defendants' film "Enthiran" are so fundamental to make it as a literal imitation of plaintiff's story. He could have examined independent witness, who had read his story and watched the defendants' movie to establish that the defendants' story is nothing but a literal imitation of plaintiff's story. For the reason best known to the plaintiff, he failed to examine any independent witnesses. Therefore, except the interested testimony of PW.1, there is no evidence available on record to show that the story of the defendants movie is literal imitation of plaintiff's story.

18. The learned counsel for the plaintiff by relying on series of letters marked under Ex.P7 submitted that the 3<sup>rd</sup> parties had written to the plaintiff about the similarities of the defendants' story. The first letter under Ex.P7 was written by one S.B.Manimaran from Pattukkottai, dated 20.10.2010. The second letter was written by one Palanivel, dated 20.10.2010 from Keeramangalam, Pudukkottai District. The 3<sup>rd</sup> letter dated 21.10.2010 was written by one Somasundaram of Tiruvarur. The letters were marked with the covers. As seen from the covers, the courier serial number for the first letter is 014439042077, the Courier Serial number for the second letter is



014439042078; both were sent from Pattukkottai (PTK). Though

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Manimaran had his residence at Pattukkottai and Palanivel had his residence at Keeramangalm, Pudukottai District both the letters were sent on same date from Pattukkottai with successive serial numbers. When the same was pointed out to PW.1, during his cross examination, PW.1 answered evasively by saying they might be friends and they might have despatched the letters from single courier office. In fact, one person is living in Pattukkottai and another person is living in a village at Pudukottai District. Hence, similar letters on the same day by same courier with successive serial numbers appears to be un-natural to this Court. Therefore, Ex.P7 series cannot be taken into consideration in the absence of any other evidence. The plaintiff could have very well examined any other independent witness in support of his case. In that case, the defendants would have got an opportunity to cross examine alleged authors of Ex.P7. For the reason best known to him, he has not chosen to examine any other independent witness in support of his case that the story line of the defendants is pirated version of the plaintiff story. Therefore, there is no acceptable evidence available on record except the interested oral testimony of the plaintiff that the story line of the defendants' film is a literal imitation of plaintiff's story. The plaintiff has not produced



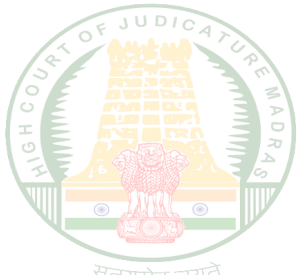
any material to compare the story line of the defendants with that of the plaintiff. At the minimum, the plaintiff should have issued a notice to the defendants calling upon them to produce the story line or script of the defendants' story "Enthiran". The plaintiff has not made any such attempt to enable the Court to compare the story line. As discussed earlier, he also failed to examine any independent witnesses to prove that the story line of the defendants is literal imitation of plaintiff's story line. In such circumstances, the plaintiff failed to prove his case that the defendants' story "Enthiran" is the pirated version of plaintiff's story "Jugiba" and consequently, the issue Nos.1 and 2 are answered against the plaintiff and in favour of the defendants.

19. Issue Nos.3, 4, 5 and 6:

In view of the conclusion reached by this Court in issue No.1 and 2, the plaintiff is not entitled to any relief in this suit. Hence, issues 3 and 6 are answered against the plaintiff and consequently, the suit is liable to be dismissed.

20. In Nutshell:

The suit is dismissed and the plaintiff is directed to pay the cost of the suit to the defendants.



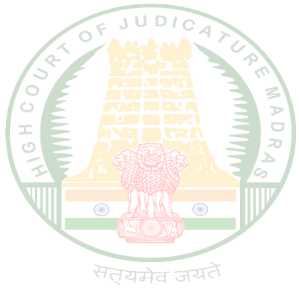
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**S.SOUNTHAR, J.**

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Pre-Delivery Order made in  
**C.S.No.914 of 2010**

**15.06.2023**