

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/APPEAL FROM ORDER NO. 197 of 2017**  
**With**  
**CIVIL APPLICATION (FOR STAY) NO. 2 of 2017**  
**In**  
**R/APPEAL FROM ORDER NO. 197 of 2017**

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CRAZY CONCEPTS AND MAZES PVT. LTD. & 1 other(s)  
 Versus  
 N. VENKTA YAYADRI RAO & 1 other(s)

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Appearance:

MR RH BHANSALI(2618) for the Appellant(s) No. 1,2  
 MR TEJAS S TRIVEDI(5692) for the Appellant(s) No. 1,2  
 UNSERVED REFUSED (N) for the Respondent(s) No. 1,2

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**CORAM: HONOURABLE DR. JUSTICE A. P. THAKER**

**Date : 09/06/2022**

**ORAL ORDER**

1. By way of present Appeal from Order, original plaintiffs have challenged order dated 18.1.2017 passed by learned Chamber Judge, City Civil Court, Ahmedabad, below Exh.6/7, for interim injunction in Civil Suit No.1325 of 2015 and rejected the application for interim injunction preferred by the plaintiffs. The appellants are the original plaintiffs and the respondents are the original defendants before the trial Court (for the sake of brevity and convenience the parties are referred to as "the plaintiffs" and "the defendant").

2. The facts relevant for the purpose of present appeal are as under:-

2.1 Plaintiff no.1 is a company under the Companies Act, 1956 and plaintiff no.2 is a partnership firm and the Directors and partners of plaintiff no.1 and 2 are same. That the plaintiffs are engaged in the business of entertainment i.e.

they are entertaining public by way of art, drama, picture, film etc. at the address mentioned in the cause title and they have various branches, entertainment projects/houses etc. across India.

2.2 Plaintiff no.2 is the sister concern of plaintiff no.1 and plaintiff no.2 is exclusive owner of the Trademark "SCARY HOUSE" under the Trade Marks Act, 1999 and also exclusive owner/proprietor of artistic/ literary/ dramatic/ musical works under the title "SCARY HOUSE".

2.3 That defendant no.1 is an ex-employee of plaintiff and had worked at various entertainment houses i.e. SCARY HOUSE/ HORROR HOUSE of the plaintiffs. That defendant no.2 is a proprietary concern and partnership concern of defendant no.1 and/or defendant no.1 is an employee/authorized person of defendant no.2.

2.4 That Managing Director of plaintiff no.1 and partner of plaintiff no.2 had started a project and written a horror drama in the year 2004 with hardwork, unique vision and with naval thinking with a view to entertain public by fun and fear. That plaintiff no.2 had done adaptation (conversion) of said drama/ story into public performance with title SCARY HOUSE by representing said drama/ story in a dramatic way with artistic work, literary work, musical work, drama work, sculpture, art work, picture, lighting etc. The Managing Director of plaintiff no.1 has been fully paid for the said work and has assigned the said work in favour of plaintiff no.2 firm and, therefore, plaintiff no.2 became exclusive owner and proprietor of the said work as per the provisions of the Copy Right Act, 1957.

2.5 That the plaintiffs have performed/ published said work extensively, continuously and uninterreptedly and have acquired fame, reputation, goodwill and demand of said work. That public are identifying, recognizing and enjoying the said work of the plaintiffs by said reputation of literary work along with artistic work, musical work and dramatic work etc. By virtue of first publication of said work, the plaintiffs become exclusive owner and proprietor of said work and, therefore, imitation thereof and/or substantial and/or material reproduction and/or adaptation of said work in person, firm and or company will amount to infringement of plaintiffs' copyright and the plaintiffs can restrain such person, firm and/or company from committing an act of infringement of copyright. According to the plaintiffs, they have adopted distinctive trademarks, SCARY HOUSE and HORROR HOUSE and HOUSE OF HORROR and are using the said mark openly, extensively and continuously in the market since long and therefore they have acquired distinct reputation and goodwill that plaintiff no.2 has filed trademark application for registering its distinctive mark SCARY HOUSE in respect of such services and allied goods *vide* Trade Mark No.1399240 and 1399241 in Clauses-41 and 16 and plaintiff no.1 has filed Trade Mark Application for registering its distinctive mark HORROR HOUSE and HOUSE OF HORROR in respect of said services *vide* Trade Mark Application Nos.1517861 and 1517860 in Clause 41 respectively. That plaintiff no.1 is also a registered proprietor of HUNTED RESTAURANT and are registered proprietors of said mark and the same are valid and in force till date.

2.6 That in the third week of May 2015, the plaintiffs, through its one of the representative came to know that someone has started "TERRIFIC DEVIL ZONE" with substantial and material reproduction and adaptation of said work of plaintiffs at Mangalore. That plaintiffs have immediately inquired at Mangalore and found that defendant no.1, who was an employee of the plaintiff has started illegal activity at the same premises, where the plaintiffs were earlier carrying on the activities with the name of "TERRIFIC DEVIL ZONE" by taking essential features of art work of SCARY HOUSE of the plaintiffs with substantial and material reproduction of the said work of the plaintiffs. That adoption of the work by the defendant is dishonest and *mala fide*, and the defendants are pirating this work with fraudulent and *mala fide* intention to infringe trademark and encash upon the goodwill and reputation of the plaintiffs' work. That the impugned work of the defendant is highly identical and deceptively similar with the plaintiffs' work and as such there is every possibility of every person with average intelligence may visit the premises of the defendants as that of the plaintiffs, which would result into gross irreparable loss and injury to the plaintiffs and unlawful gain for the defendants.

2.7 Under aforesaid facts, the plaintiffs have filed suit for declaration and injunction and pending suit filed an application for interim injunction for restraining the defendants, their agents from committing infringement of copyright and also restrain the defendants and their agents from diluting and sharing the trade secrets and confidential information of the plaintiffs' work to any third party and/or to use trade secrets and confidential information of the plaintiffs for their personal use, gain and/or to help others.

3. Heard learned advocate Mr.R.H.Bhansali for the plaintiffs-appellants. Defendant nos.1 and 2 have refused the service of notice, therefore, they are not represented by anybody. Perused the material placed on record.

4. Mr.Bhansali, learned advocate for the plaintiffs-appellants has vehemently submitted that the trial Court has not properly appreciated Section 22 of the Copyright Act. He also submitted that the trial Court has failed to appreciate the fact that in case of breach of copyright and trademark, no compensation can be adequate in terms of money as it is intellectual property, infringement of which may adversely affect reputation and goodwill of the plaintiffs. He also submitted that the defendant is a previous employee of the plaintiffs and, therefore, he was in knowledge of the artistic work of the plaintiffs and he has utilized that trade secret, deceptively using the same for his gain. He also submitted that defendants have not appeared in present matter and version of the plaintiffs need to be believed. He has also submitted that when the copyright and trademarks are duly registered, the registered owner has every right to protect it against anybody adopting it in any way in the country. He has also submitted that the observations made by trial Court while rejecting application of the plaintiffs is not in consonance with law. He has submitted that defendant has only changed name and using name "TERRIFIC DEVIL ZONE" but in reality he has adopted the artistic work of the plaintiffs and, thereby influencing the valuable right of the plaintiffs, which needs to be protected and injunction in favour of the plaintiffs needs to be granted. He has prayed to allow present appeal.

5. Now, it is well settled that in an appeal against exercise of discretion by the Court of first instance, the power of the Apex Court to interfere with the exercise of discretion is restrictive. Merely because, on facts, the appellate Court would have concluded differently from that of the Court below, would not, by itself, provide justification for an appellate Court to interfere. To justify interference, the appellant would have to demonstrate that the discretion has been shown to have been exercised arbitrarily, or perversely or where the Court had ignored settled principles of law regarding grant or refusal of interlocutory injunction. An appeal against exercise of discretion is an appeal on principle. (Wendor Limited v. Antox India Private Limited, 1990 Supplementary SCC 727 ; Skyline Education Institution (India) Private Limited (2010) 2 SCC 142).

6. Considering the submissions made on behalf of the appellants coupled with the material placed on record and the impugned order of the trial Court and limited jurisdiction of this Court in interfering with the impugned order of the trial Court, it is clear that the plaintiffs are claiming copyright over the dramatic work as alleged in the suit. On perusal of the impugned order, it appears that the trial Court has observed that copyright has come to an end in the year 2011 itself and, therefore, on the date of filing of suit, there was no copyright in existence in favour of the plaintiffs and claim of the plaintiffs regarding adaptation of artistic work of the plaintiffs by the defendants cannot be believed and the plaintiffs can be compensated in terms of money in future. These observations of the trial Court is legally not tenable in view of Section 22 of the Copyright Act, 1957, which provides as under:-

*“22. Term of copyright in published literary, dramatic, musical and artistic works.—Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until 1[sixty years] from the beginning of the calendar year next following the year in which the author dies.*

*Explanation.—In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.”*

7. In view of provisions contained in aforesaid Section 22, copyright would subsist in the life time of the author and until 60 years from the beginning of calendar year next following the year in which the author dies. Thus, copyright would not come to an end on a particular date, it will subsist till the death of the author and even 60 years thereafter. Therefore, admittedly the observations of the trial Court that copyright has expired in 2011 is legally not tenable.

8. The Copyright Act also defines term “adaptation” in Section 2 (4), which includes amongst other things, in clause (ii) that in relation of a work or an artistic work, the conversion of work into a dramatic work by way of performance in public or otherwise. Thus, features of copyright registered and somebody else adopts such work and convert it into a dramatic work by way of performance in public or otherwise would fall in term “adaptation”. Now, admittedly in the present case, the

pleadings of the plaintiffs alleging adaptation by defendant, who is an ex-employee has not been denied by the defendants by filing written statement or affidavit even before the trial Court nor before this Court. When the pleadings of the plaintiffs, which are based upon documentary evidence coupled with affirmation on affidavit are not challenged by other side, at interlocutory stage, such pleadings of the plaintiffs need to be accepted at least for the purpose of interlocutory order of injunction. In the present case, the plaintiffs have produced various documentary evidence showing that its artistic work having copyright have been used by defendants by changing only the name of the Show. This factum has not been denied by the defendants by filing reply or affidavit. Thus, entire approach of the trial Court in deciding interim injunction application and ultimately rejecting it is arbitrary one and against the provisions of the Copyright Act. Therefore, under the circumstances of the case, the impugned order of the trial Court needs to be interfered with and the injunction, as prayed for by the plaintiffs against the defendants, needs to be granted.

9. In view of above, present Appeal from Order is allowed. Impugned order dated 18.1.2017 passed by learned Chamber Judge, City Civil Court, Ahmedabad, below Exh.6/7, for interim injunction in Civil Suit No.1325 of 2015 is quashed and set aside. Application Exh.6-7 filed in Civil Suit No.1325 of 2015 is allowed in terms of para 36 (A) and (B) of the application. Considering the fact that suit is of the year 2015, trial Court is hereby directed to expedite the hearing of the suit and see to it that it is disposed of as early as possible and preferably within a period of six months from the date of receipt of this



order. No order as to costs. Direct service is permitted. In view of above order in Appeal from Order, Civil Application for stay would not survive for any order and the same is disposed of accordingly.

Sd/-

**(DR. A. P. THAKER, J)**

R.S. MALEK

