

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 10.01.2022

PRONOUNCING ORDERS ON : 12.01.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Civil Suit No.329 of 2014
(Comm.Suits)

M/s.Sun TV Network Ltd.,
Rep.by its Authorised Signatory
Mr.M.Jothi Basu
Murasoli Maran Towers
73 MRC Nagar Main Road
MRC Nagar, Chennai-28.

.. Plaintiff

.vs.

1.M/s.Super Good Films Private Limited
Rep.by its Managing Director
Mr.R.B.Chowdary
No.32, North Boag Road
T.Nagar, Chennai 600 017.

2.M/s.United India Exporters
Represented by its Partner
Mr.Mohammed Yahiya
5/21, Ormes Road
Kilpauk, Chennai 600 010.

3.M/s.A & P Groups
Represented by its Partner
No:3C/11, Ground Floor
Hindi Prachar Sabha Street
T.Nagar, Chennai 600 017.



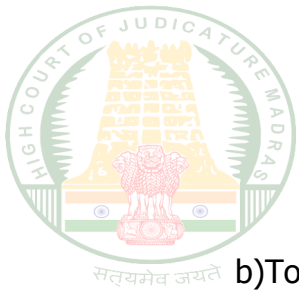
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4.M/s.Global Infotainment Pvt.Ltd.,
Represented by its Partner
Row House No.15
R.S.C.II Road Near Versova Telephone Exchange
Mhada, Andheri (W)
Mumbai 400 053.

..Defendants

Prayer: Civil Suit has been filed under Order VI Rule 1 of Original Side Rules, R/w Sections 55 and 62 of the Copy Rights Act & VII Rule 1 of CPC., prays for judgment and decree against the defendants:

a) Declaration that the plaintiff is the sole and exclusive copyright holder for broadcasting the tamil film "JILLA" starring Vijay, Mohanlal, Poornima Bhagyraj Kajal Agarwal and others through Satellite Television Broadcast, Direct to Home Broadcast, Direct Satellite Service, Internet, Video Streaming through all forms, I.P.TV, Broadband, Telephone, Telephony, Cell Phone, Radio (all dimensions), VCD, DVD, Video On Demand, Moview Demand, Video, High Definition (HD), Laser Disc, Blue Ray, U-Matic, Inflight, Airborne, Railborne, Terrestrial Television Broadcast (all dimensions), through Cable/viz Cable TV, Local Delivery System, MMDS, Seaborne, all modes of public/private transportation, Public Service Broadcasting, Private Communication/ Broadcast, Wire, Wireless, 2D & 3D formats/Dimensions of the film or any other formats/ Dimensions which may be in existence now or invented in future or through any other forms, means and modes and any forms of communication like signs, signals, writing, pictures, images and sounds of all kinds of transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly or any other systems without restriction of geographical area and including all channels of Doordarshan, for a perpetual period of 99 years.



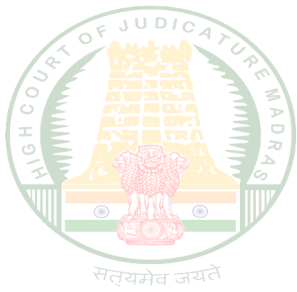
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b) To grant permanent injunction restraining the Defendants, their men, representatives, agents and anybody on behalf of the Defendants from in anyway exhibiting or exploiting the Tamil film "JILLA" starring Vijay, Mohanlal, Poornima Bhagryraj, Kajal Agarwal and others through Satellite Television Broadcast, Direct to Home Broadcast, Direct Satellite Service, Internet, Video Streaming through all forms, I.P.TV, Broadband, Telephone, Telephony, Cell Phone, Radio (all dimensions), VVCD, DVD, Video On Demand, Movie Demand, Video, High Definition (HD), Laser Disc, Blue Ray, U-Matic, Inflight, Airborne, Railborne, Terrestrial Television Broadcast (all dimensions), through cabel/via Cable TV, Local Delivery System, MMDS, Seaborne, all modes of public/private transportation, Public Service Broadcasting, Private Communication/Broadcast, Wire, Wireless, 2D & 3D formats/Dimensions of the film or any other formats/Dimensions which may be in existence now or invented in future or through any other forms, means and modes and any forms of communication like signs, signals, writing, pictures, images and sounds of all kinds of transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly or any other systems without restriction of geographical area and including all channels of Doordarshan, for a perpetual period of 99 years.

c) to pay cost.

For Plaintiff : Ms.M.Sneha

For Defendants : Mr.M.A.Kalam
for D 2



J U D G M E N T

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The plaintiff has filed the instant suit seeking for a relief of permanent injunction against the defendant, their men, representatives, agents and anybody on behalf of the defendants from in anyway exhibiting or exploiting the Tamil film 'JILLA' and for a declaration that the plaintiff is the sole and exclusive copyright holder for broadcasting the Tamil film 'JILLA' starring Vijay, Mohanlal and others through Satellite television Broadcast, direct to home broadcast, direct satellite service, internet, video streaming through all forms, I.P.T.V Broadband, telephone, telephony, cell phone, Radio (all dimensions), VCD, DVD, Video on Demand, movie demand, video high definition (HD), laser disc, blue-ray, U-Matic, inflight, Airborne, Rail borne, terrestrial television broadcast (all dimension), through cable/via cable tv, local delivery system, MMDS, Sea borne, all modes of public/private transportation, public service broadcasting, private communication/ broadcast, wire, wireless, 2D & 3D formats/dimensions of the film or any other format which may be in existence now or invented in the future or through any other forms of communication like signs, signals, writing, pictures, images and sounds of all kinds of transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly without restriction of geographical area and including all channels of Doordharshan, for a perpetual period of 99 years. The plaintiff has further prayed for a direction to the defendant to pay costs.



Case of the Plaintiff:

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2.The plaintiff is a leading television network in South India. The plaintiff is also involved in production and distribution of movies. The plaintiff states that in the course of its business, they also enter into assignment agreements to take assignment of copyright for the films for terrestrial television broadcast and satellite television broadcast rights and other broadcasting rights including exhibition of films by means of wire and wireless diffusion.

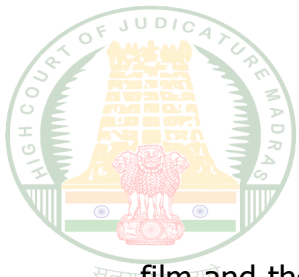
3.The plaintiff submits that the 1st defendant is the producer and exclusive copyright holder of the cinematography Tamil film 'JILLA' starring Vijay, Mohanlal and others. The 1st defendant by way of agreement dated 08-07-2013 assigned the copyright for the said film in favour of the plaintiff for broadcasting through various modes of broadcast and transmission, for a consideration of Rs.15,50,00,000/-. As per the agreement, on the date of signing of the agreement, the plaintiff is to pay a sum of Rs.3,87,50,000/- on the completion of 50% of the shooting another sum of Rs.3,87,50,000/- at the time of audio launch another sum of Rs.3,87,50,000/- and on receipt of censor certificate along with the digital intermediate data files of the film, the remaining sum of Rs.3,87,50,000/- is to be paid. The plaintiff states that as per the agreement the entire consideration amount was paid to the defendants in four instalments on 16-07-2013, 03-09-2013, 24-12-2013 and 07-01-2014. The plaintiff further states that as per assignment agreement dated 08-07-2013 the tentative date of release of the said movie was 24-01-2014 and the plaintiff's telecast commencing date for the



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entire world was 90 days from the date of general theatrical release. The plaintiff states that, subsequently, there was a supplementary agreement dated 6-1-2014 entered into between the plaintiff and the 1st defendant wherein the 1st defendant has acknowledged the receipt of the entire consideration and also changed the telecast commencing date from 05-05-2014 to 20-04-2014.

4. The grievance of the plaintiff is that, the 1st defendant with an intention to cheat the plaintiff has entered into an agreement dated 31-07-2013 with the 2nd defendant wherein the 1st defendant has assigned to the 2nd defendant the exclusive rights to make, sell or let out for their copies of the cinematographic film 'JILLA' and broadcast the said film through various mediums of broadcast and transmission. The plaintiff states that the above said rights are assigned exclusively to the 2nd defendant for the entire world except India and armed with same, the 2nd defendant was taking all steps to exploit the said film. The plaintiff further states that while this being so, 3rd and 4th defendants who have no rights of any kind with respect to the said movie, have entered into an agreement dated 08-02-2014 wherein the 3rd defendant has assigned the 'AIRBORNE' rights for the said movie for all airlines for the entire world excluding India for a period of 2 years and 6 months from the date of agreement. The plaintiff states that the 1st and 2nd defendants colluding with each other have assigned the rights to the 2nd defendant subsequent to assigning the same to the plaintiff with respect to the said



film and the 2nd defendant had in turn assigned the airborne rights to the 3rd defendant who in turn assigned it in favour of the 4th defendant.

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5.The plaintiff states that they have clearly established the assignment of copyright of the film by the 1st defendant in favour of the plaintiff and also established the entire consideration paid for the same. The agreement in favour of the plaintiff is prior to that of the alleged agreement in favour of the 2nd defendant. The plaintiff claims that the alleged assignment agreement in favour of the 2nd defendant was for theatrical release of the said movie outside India. Clause 8 of the alleged agreement clearly states that the said consideration of rupees 10 cores is only for theatrical release of the said film outside India. While this being so, the plaintiff claims that the 2nd defendant cannot claim airborne rights and assign it in favour of the 3rd defendant who in turn assigned it to 4th defendant without any valid right. The plaintiff states that they have exploited the film in its satellite channels and OTT platforms and various other modes and the 2nd defendant has not come forward with any claim. The plaintiff claims that this clearly establishes that the 2nd defendant is well aware of the fact that, what was assigned to them was only theatrical release of the said movie outside India. On these pleadings, the plaintiff has laid the present suit.

Case of the Defendant:

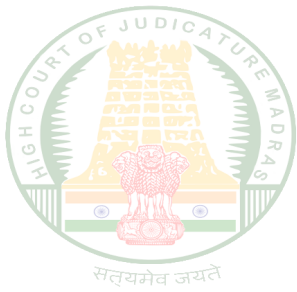


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6.The 2nd defendant states that the 1st defendant entered into an agreement with the 2nd defendant on 31-07-2013 wherein, the 1st defendant assigned to the 2nd defendant exclusive rights to make, sell or let out copies of the Tamil film 'JILLA' along with various other rights. The 2nd defendant states that the rights are assigned exclusively to the 2nd defendant for the entire world excluding India for a consideration of Rs.8,25,00,000 /-

7.The 2nd defendant claims that that they were not aware of the assignment agreement entered into by the 1st defendant with the plaintiff. The 2nd defendant further claims that neither the plaintiff nor the 1st defendant informed about the assignment agreement dated 08-07-2013 to the 2nd defendant. The 2nd defendant states that the entire consideration of Rs.8,25,00,000/- was paid before the plaintiff's alleged supplementary agreement with the 1st defendant dated 06-01-2014. The 2nd defendant states that 1st defendant is the author and copyright holder of the suit film and in view of the assignment dated 31-07-2013, the 2nd defendant has got copyright to telecast the film.

8.Based on the above pleadings, the following issues were framed by this Court:



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- i. Whether the plaintiff is the copyright holder of the suit movie 'Jilla' ?
- ii. Whether the alleged agreement in favour of the 2nd defendant is valid, since the same being subsequent to that of the plaintiff's assignment agreement?
- iii. Whether the plaintiff is entitled for the relief of injunction?
- iv. To what other reliefs?

9. The 1st, 3rd and 4th defendants were served and these defendants did not choose to defend themselves either in person or through counsel and were called absent and set ex parte by this court on 06-11-2019.

10. The plaintiff examined PW1 and Ex.P-1 to Ex.P-13 were marked. The defendant examined DW1 and Ex.D-1 to Ex.D-3 were marked.

Discussion and Findings:

11. Considering the limited scope of the present suit, all the issues can be taken up together. The undisputed fact in the present case is that the 1st defendant is the producer and exclusive copyright holder of the cinematography Tamil film "JILLA". The same is evident from Exhibit P-11 which is the censor certificate issued by the Central Board of film certification wherein it is seen that the 1st defendant is the producer of the Tamil film. The 1st defendant and the plaintiff entered into an assignment



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agreement dated 08-07-2013 and this document has been marked as Exhibit P-2. It is clear from this document that the 1st defendant assigned the exclusive copyright in favour of the plaintiff in respect of satellite television broadcast and it reads as follows:

“The ‘ASSIGNOR’ hereby assigns to the ‘ASSIGNEE’ the exclusive copyright in respect of Satellite Television Broadcast, Direct to Home Broadcast, Direct Satellite Service, Terrestrial Television Broadcast and all other rights connected therewith including exhibition of the schedule mentioned picture by means of wireless diffusion and by wire for communication to the public through Television Broadcast for the entire world.”

The total consideration payable by the plaintiff to the 1st defendant was fixed as Rs.15,50,00,000/-. The plaintiff has paid this amount in four instalments and the same is evident from Exhibits P-5, P-8, P-10 and P-13.

12. The date of release of the movie was tentatively fixed as 24-01-2014 and the right of the plaintiff to telecast the movie was fixed as 90 days from the date of the general theatrical release.

13. The plaintiff and the 1st defendant entered into a supplementary agreement dated 06-01-2014 marked as Exhibit P-12 and it is seen from this agreement that the right of telecast of the film by the plaintiff was refixed from 05-05-2014 to 20-04-2014. This document also confirmed the receipt of the entire consideration by the



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1st defendant from the plaintiff and it is made clear that all the other terms of the assignment agreement dated 08-07-2013 will remain unaltered and binding on the parties.

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14.The right that was assigned in favour of the plaintiff was further confirmed through the letter dated 05-07-2013 written by the 1st defendant to the lab and which has been marked as Exhibit P-3. The Gemini colour laboratory in turn through their letter dated 09-07-2013 informed the plaintiff about the letter received from the 1st defendant and confirmed the assignment rights of the plaintiff. This letter has been marked as Exhibit P-4.

15.The Gemini colour laboratory once again through their letter dated 24-01-2014 informed the plaintiff that the digital format of the movie will be handed over to the plaintiff and this letter has been marked as Exhibit P-14. Thus, all the above documents virtually clinch the copyright of the plaintiff assigned through agreement dated 08-07-2013. The 1st defendant did not choose to even enter appearance and contest this suit. The only person who could have questioned or challenged the copyright of the plaintiff was the 1st defendant and in the absence of any such challenge, the rights assigned in favour of the plaintiff stands confirmed.

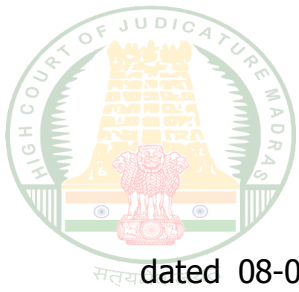
16.The 1st defendant seems to have entered into an agreement dated 31-07-2013 with the 2nd defendant and this document has been marked as Exhibit D-2. Even though the purport of this agreement seems to be assignment of theatrical



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exploitation rights of the same Tamil film in favour of the 2nd defendant, incidentally the 1st defendant seems to have once again assigned the rights which were already assigned in favour of the plaintiff through agreement dated 08-07-2013. The 2nd defendant in turn seems to have assigned 'AIRBORNE' rights in favour of the 3rd defendant to telecast the movie for all airlines for the entire world excluding India. The 3rd defendant in turn has assigned the rights in favour of the 4th defendant through agreement dated 08-02-2014 and this agreement has been marked as Exhibit P-15. Curiously, there is absolutely no material or particulars available before this court to find out as to when the 2nd defendant assigned the airborne rights in favour of the 3rd defendant. The 3rd and 4th defendants have chosen to remain *ex parte* and they have not defended their rights and therefore, this Court does not find any right whatsoever in favour of the 3rd and 4th defendants with respect to the suit film.

17.The only defence that has been raised by the 2nd defendant is that they were not aware of the assignment of rights in favour of the plaintiff by the 1st defendant through an agreement dated 08-07-2013. The 1st defendant ought to have come before this court and explained as to whether only the theatrical exploitation rights alone was assigned in favour of the 2nd defendant or the agreement dated 31-07-2013 also included the telecasting rights that were already assigned in favour of the plaintiff. In the absence of any such explanation, this court has to only go by the terms of the agreement



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dated 08-07-2013 marked as Exhibit P-2 and agreement dated 31-7-2013 marked as

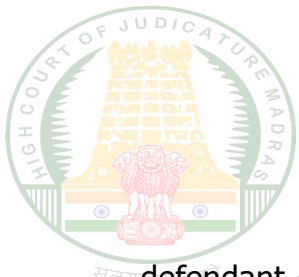
Exhibit D-2.

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18. The 2nd defendant is not contesting or seriously questioning the genuineness or validity of the agreement made in favour of the plaintiff on 08-07-2013. The 2nd defendant is merely beginning ignorance of this agreement. Such a stand does not in any way improve the case of the 2nd defendant.

19. The plaintiff has exploited the suit film in their satellite channels, OTT platform and in various other modes and the 2nd defendant has not come forward to question the rights of the plaintiff till date. Going by the attitude of the 2nd defendant, it seems that the 2nd defendant has become aware of the rights assigned to the plaintiff and hence, the 2nd defendant has only exploited the theatrical rights of the suit film outside India. The same is clear from the evidence of DW-1.

20. The 1st defendant after having assigned the telecast rights absolutely in favour of the plaintiff for a valid consideration, loses that right and the 1st defendant can no longer assign the same rights in favour of any other party much less in favour of the 2nd defendant. The facts of the present case are governed by the latin maxim *nemo dat quod non habet* which means that "no one can give what they do not have". The 1st



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defendant could not have assigned the telecast rights in favour of the 2nd defendant on 31-07-2013 since he did not possess this right on that day. This right was lost by the 1st defendant on 08-07-2013 when the assignment agreement was executed in favour of the plaintiff.

21.The facts of the present case is also governed by the Latin maxim *qui prior est tempore potior est jure*. This maxim literally means that “he who is prior in time is better in law”. The transferor of a right cannot prejudice the rights assigned to the transferee by any subsequent dealing with the very same property. The 1st defendant cannot be allowed to cause prejudice to the telecast rights of the plaintiff through the subsequent agreement dated 31-07-2013 executed in favour of the 2nd defendant. At the best, the 2nd defendant can only get the right of theatrical exploitation of the suit film outside India and nothing more. It is also seen from records that the plaintiff had the benefit of an order of interim injunction in their favour from the year 2014 onwards and hence, the defendants were never able to exploit the telecast rights already assigned in favour of the plaintiff.

22.In view of the above discussion, this court holds that the plaintiff is the sole and exclusive copyright owner for broadcasting the Tamil film “JILLA” and the agreement in favour of the 2nd defendant dated 31-07-2013, does not in anyway take away the right of the plaintiff conferred through the assignment agreement dated 08-07-2013 and to the extent the agreement dated 31-07-2013 executed in favour of the



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2nd defendant transgresses into the right of the plaintiff, the same is held to be invalid.

In view of the same, the plaintiff is entitled for the reliefs sought for in the present suit.

All the issues are answered accordingly.

23.In the result, the suit is allowed and it is decreed as prayed for. Taking into consideration the facts and circumstances of the case, there shall be a direction to the defendants to pay costs of a sum of Rs.1,50,000/- [Rupees One Lakh Fifty Thousand only] jointly and severally in favour of the plaintiff.

12.01.2022

Internet: Yes
Index : Yes
KP

List of Witness examined on the side of the Plaintiff:-

M.Jothibasus - PW-1

List of Witness examined on the side of the Defendant:-

Khaleel Rahman - DW-1

List of the Exhibits marked on the side of the Plaintiff:-

<u>Sl. Nos.</u>	<u>Exhibits</u>	<u>Description of documents</u>
1.	Ex.P.1	Original Authorization letter dated 23.01.2013.
2.	Ex.P2	Photocopy of Assignment agreement dated 08.07.2013 in favour of the plaintiff.

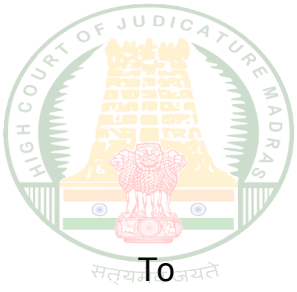


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Sl. Nos.	Exhibits	Description of documents
3.	Ex.P3	Letter dated 05.07.2013 from the 1 st defendant to Lab.
4.	Ex.P.4	Lab letter dated 09.07.2013.
5.	Ex.P.5	Photocopy of Cheque bearing No.031912 dated 16.07.2013.
6.	Ex.P.6	Assignment Agreement dated 31.07.2013 between 1 st and 2 nd defendants .
7.	Ex.P.7	Letter dated 26.08.2013 from the 1 st defendant to plaintiff.
8.	Ex.P.8	Photocopy of Cheque bearing No.032712 dated 03.09.2013.
9.	Ex.P.9	Letter dated 10.12.2013 from the 1 st defendant to plaintiff .
10.	Ex.P.10	Photocopy of Cheque bearing No.032781 dated 24.12.2013.
11.	Ex.P11	Photocopy of Censor Certificate dated 31.12.2013.
12.	Ex.P12	Supplementary Agreement dated 06.01.2014.
13.	Ex.P13	Photocopy of Cheque bearing No.032786 dated 07.01.2014
14.	Ex.P-14	Lab letter dated 24.12.2013.
15	Ex.P-15	Agreement between the 3 rd and 4 th defendants.

List of the Exhibits marked on the side of the Defendants:- --

Sl. Nos.	Exhibits	Description of documents
1.	Ex.D-1	Original Authorisation letter dated.16.8.2021.
2.	Ex.D-2	Photocopy of the agreement dated 31.07.2013 between the 1 st and 2 nd defendant .
3.	Ex.D-3	Photocopy of Assigned rights dated 03.01.2014.



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

N.ANAND VENKATESH, J.

KP



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